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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1945

No. 274

F. O. ROBERTSON, *Appellant,*

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA, *Appellee.*

BRIEF OF AMICI CURIAE IN SUPPORT OF APPELLEE.

Appeal from the Superior Court of the State of California, in and for the County of Ventura.

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I. INTRODUCTION.

This *amici curiae* brief is filed by us on behalf of the following organizations:

California Association of Insurance Agents

California State Association of Life Underwriters, Incorporated

Insurance Brokers Exchange of California

Insurance Brokers Society of Southern California

Surplus Line Association of California

The Society of Insurance Brokers

The members of the above associations and their affiliated associations handle a substantial portion of the insurance business transacted in the State of California by or with admitted and nonadmitted insurers.

They are convinced that the particular regulations at issue in this cause are essential for the protection of the safety, health, morals, good order and general welfare of the people of California, and therefore constitute a valid exercise of its police power. They are further convinced that even though such regulations affect interstate commerce, the protection of the safety, health, morals, good order and general welfare of the people of California requires such action, and that, consequently, such regulations are a valid exercise of the power of the State of California and are not a violation of the Federal Constitution.

The history of these organizations shows that over a period of many years they have endeavored so to conduct themselves and their activities that their members would be considered by the people of California as having a high professional standing. Among other things they have supported California's reasonable licensing and qualification regulations. Although there is admittedly a personal interest in a man's desire to build for himself a good reputation in his community, in this instance this personal interest results simultaneously in protecting the people of California. By reason of the endeavors of these associations and of the licensing and other regulations imposed by the State of California for the purpose of promoting higher ethical standards and safeguards, the people of California have a right to rely upon (1) the integrity and

competency of any person who seeks to interest them in insurance, (2) the fairness of the policy, and (3) the stability and financial capacity of the insurer. Obviously, if all such regulations and restrictions are removed the protection now afforded the people of California would no longer exist. It is unnecessary to comment upon the detrimental results on the safety, health, morals, good order and general welfare of the people of the State of California if this protection is removed and insurance claims are not paid at a time when the proceeds are essential to widows, minor children, insureds in their old age, and to businesses upon fire or liability loss insured against. No man should be more trustworthy than he who deals in insurance, for everyone is aware of the dangers to health and morals which accompany destitution, and certainly destitution would result in many instances were it not for the protection afforded by these regulations.

Having read appellant's opening brief and appellee's answering brief, we believe that it will be of assistance to the Court to summarize the situation and issues as they appear to us, including: (1) the facts which served as the basis for appellant's conviction; (2) the specific counts upon which appellant was convicted; (3) the history of the proceedings in the lower Courts; and (4) the specific regulations claimed by one or both parties to be involved, the purposes of and reasons for the regulations.

II. STATEMENT OF THE CASE.

On August 29, 1944, F. O. Robertson called on A. J. O'Lein in Ventura County, California, on behalf of the First National Benefit Society of Phoenix, Arizona. He explained the insurance offered by the latter, took an application from Mr. O'Lein, collected the membership fee, including the quarterly premium, and gave the Company's receipt therefor. (R. 19, 20.) Apparently Robertson forwarded the application to the insurer, for the policy was later delivered to O'Lein through the United States mail. (R. 12.)

The First National Benefit Society is, as shown by its policy (Exhibit 5, R. 29, 30, 31), an Arizona corporation. The policy provided for the payment of a fixed premium and for assessments in the event of insufficient funds to pay claims. The schedule of benefits indicates that the life of Mr. O'Lein was to be insured in the sum of $465.00, but other provisions reduced this amount to $155.00 during the first six months and $310.00 during the second six months the policy was in force. Suicide at any time was an excepted risk. The policy does not indicate that any reserves are required to be maintained. There is no evidence in the record as to the financial condition of First National.

In summary, Robertson in this state solicited, sold, and collected the premium for, life insurance in a foreign corporation that had not qualified for the transaction of insurance in this state, without himself procuring a license to do so.

We respectfully call the Court's attention to the fact that the record contains no evidence whatsoever as to whether or not

(1) First National could have qualified for admission to do business in California under existing California laws;

(2) First National could have qualified for admission to do business in California under California laws applicable prior to January 1, 1940;

(3) The insurance issued to O'Lein could have qualified for placement with any nonadmitted insurer by California surplus line brokers or by California agents or brokers through California surplus line brokers;

(4) Appellant could have obtained a surplus line broker's license or an agent's or broker's license and have legally participated in the O'Lein-First National insurance transaction under such a license.

III. THE COMPLAINT.

A complaint was filed against Robertson in the Justice's Court in Ventura County, State of California, for violating Section 703 (a) of the California Insurance Code, in that he did "wilfully and unlawfully act as an agent for a non-admitted insurer * * * in the transaction of insurance business in this State" (R. 1); and for violating Section 1642 of the same code in that he did "wilfully and unlawfully solicit and sell to A. J. O'Lein a policy of

insurance" while "not then and there being licensed by the Insurance Commissioner of the State of California to act as an insurance agent, broker or solicitor". (R. 1, 2.)

IV. THE PROCEEDINGS.

Robertson was found guilty on both counts. (R. 23.) He appealed to the highest appellate tribunal for that Court, the Superior Court of the State of California in and for the County of Ventura, and the judgment was affirmed on appeal. (R. 40.)

An appeal was allowed to this Court by the State Court (R. 48), and this Court entered its order noting probable jurisdiction on October 8, 1945. (R. 54.)

V. THE ISSUES.

As nearly as we can ascertain, appellant contends that Sections 703, 1642 and 10818 of the California Insurance Code, together with related sections, have the effect of prohibiting and discriminating against the transaction described above and constitute an unconstitutional prohibition and discrimination against interstate commerce. Appellant contends that he was therefore excused from complying with the California regulatory laws applicable to him as an insurance salesman. The theory underlying appellant's argument runs about as follows:

1. The First National cannot comply with the present California requirements for doing business in this state.

2. The plan upon which First National operates, and the policies which it issues, makes First National so similar to a class of insurers which were admitted prior to 1940 that the refusal of California to admit any additional insurers of that type subsequent to January 1, 1940, either domestic or foreign, constitutes an unconstitutional discrimination against First National.

3. The law governing the licensing and regulation of surplus line brokers discriminates against First National in this transaction, and neither those laws nor the laws governing the conduct of licensed agents (and brokers, though he does not mention them) would have permitted the transaction here involved.

4. These claimed prohibitions and discriminations are void as applied to First National, and appellant can therefore act for First National in this state without complying with the qualification laws applicable to him.

These contentions are beside the issue because:

(1) As will be later shown, appellant, if qualified, could have procured any one of three licenses, and, on his statement of the facts, have lawfully performed the acts for which he was convicted.

(2) First National is not here as a party raising these issues: it has not disclosed its financial condition, its methods of operation, nor the character of its management to the scrutiny of this Court so that the claims of appellant may be probed.

(3) First National, as a nonadmitted insurer, could have completed the transaction without the participation of an agent within this state.

To demonstrate the factual and analytical misapprehensions underlying the claims that California laws completely prohibit or discriminate against this transaction, it will be necessary to trace and discuss the scope and operation of these laws. In so doing we believe we shall demonstrate that the claimed unconstitutional prohibitions and discriminations against First National do not exist.

Our discussion of these laws will fall under four headings:

A. The California licensing laws do not prohibit, do not discriminate against, do not unduly burden, the commerce here involved, and are a proper exercise of the police power.

B. The surplus line law permitted the placing of this risk with a nonadmitted insurer by or through a surplus line broker; it is a valid exercise of the police power.

C. California has not discriminated against insurers of the type appellant represented.

D. A state may in the valid exercise of the police power prohibit the doing of any acts within the state in aid of an insurance transaction which is against the public interest, whether in interstate commerce or not.

VI. ARGUMENT.

A. THE CALIFORNIA LICENSING LAWS DO NOT PROHIBIT, DO NOT DISCRIMINATE AGAINST, DO NOT UNDULY BURDEN, THE COMMERCE HERE INVOLVED, AND ARE A PROPER EXERCISE OF THE POLICE POWER.

Appellant contends that

> "The California law is not merely one regulating the character and responsibility of an agent but absolutely prohibits such an agent from writing [insurance in] or assisting the company with which this risk was placed *from* [in] doing business, either interstate or intrastate in the State of California."

And that

> "There is no law in the State of California requiring an insurance agent or insurance solicitor to obtain a license to engage in that business separated from an agency to represent a particular company or employer. *No person could obtain a license in the State of California to perform any transaction for the insurer here involved or for any nonadmitted company.*" (Emphasis ours.)
>
> (Appellant's Opening Brief, 31.)

In making these statements counsel must have completely overlooked the provisions of California law under which the appellant, if qualified, could have obtained either a broker's license or an agent's license and have participated in the transaction here involved, without himself procuring a license as a surplus line broker.

Insurance Code Section 703, which makes it a misdemeanor for one not licensed as a surplus line broker to act as an agent for a nonadmitted insurer in this state

must be read in connection with Section 1776, which is a part of the Surplus Line Law.

Section 1776 provides in part as follows:

> "It is a misdemeanor for any agent or broker to solicit, negotiate or effect any insurance governed by the provisions of this chapter in nonadmitted insurers, except by and through a surplus line broker or special surplus lines broker licensed pursuant to this chapter."

The clear implication is that an agent or broker may effect such insurance *through* a surplus line broker. This implication is further strengthened by this provision:

> "* * * it is a misdemeanor for any surplus line broker * * * to accept, place, pay, or permit the payment of commission or other remuneration upon insurance placed by him under authority of his license to any person other than one holding a license to act as an insurance agent; insurance broker * * *"

If appellant had complied with Section 1642 and possessed either an agent's or broker's license he could have placed this risk with First National through a surplus line broker.

Appellant contends that he was acting in interstate commerce, that his acts did not constitute "doing business" in the state, and that the laws governing the qualification and conduct of agents and brokers cannot apply to him. There can be no question that he performed the duties of an insurance salesman within this state. (R., 9.) There is no doubt that the state may require a license of one to engage in an occupation in which character and competency are necessary to the protection of the public.

as a means of ascertaining whether he possesses the necessary qualifications. The laws governing the qualification and conduct of insurance agents and brokers are contained in the appendix and discussed below.[1]

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[1]Since 1862 the laws of California have regulated insurance agents. (California Stats. 1862: Ch. 227: p. 243.) In 1923, as to agents, and 1921 as to brokers, these laws required the Insurance Commissioner to satisfy himself that an applicant has had experience or instruction in each of the kinds of insurance he proposed to write or that he will be given the necessary instruction within thirty days "to the end that the interests of the insuring public and of the insurers may be reasonably served". (Pol. C. Sec. 633, as am. 1923: 355: 731; Pol. C. Sec. 633a, as am. 1921: 882: 1669.)

The need for the protection of the insuring public from unqualified insurance salesmen has resulted in the expansion of these early license laws.

An insurance agent is one authorized by and on behalf of an insurer to transact insurance. (Ins. C. 31.) He must procure a license from the Insurance Commissioner before he may act as an insurance agent. (Ins. C. 1642.) To procure such a license an individual must satisfy the Commissioner that:

(a) He is properly qualified.
(b) Granting the license will not be against the public interest.
(c) He intends actively and in good faith to carry on the business of an insurance agent.
(f) The license is not being secured for the purpose of securing certain unlawful rebates.
(h) He is of good business reputation.

(The foregoing subdivisions are taken from Section 1649.)

In addition applicants are required to pass an examination "which shall be of sufficient scope to satisfy the Commissioner that the applicants have sufficient knowledge of, and are reasonably familiar with, the insurance laws of the State and with the provisions, terms and conditions of the insurance which the license will authorize them to transact and have a general and fair understanding of the obligations and duties of an insurance agent, broker or solicitor". (Ins. C. 1675, 1649 (g).)

The Commissioner may decline to issue the license if the applicant fails in these respects or if the Commissioner finds any one of a number of facts to exist as to the applicant, among which are:

(d) He "has engaged in a fraudulent practice or conducts his business in a dishonest manner".
(e) He "has shown that he was incompetent or untrustworthy in the conduct of his business or has by commission of a wrongful act or practice in the course of his

It is apparent that the objectives of these laws are to determine competency and integrity in advance, as far as is possible, and to eliminate those who later prove themselves deficient.

The state, aware of the inability of the average man to understand an insurance contract, would be remiss if it did not require those selling such contracts to possess some knowledge of them and at least a good business reputation.

These laws are applied to agents and brokers transacting insurance for and with both domestic and foreign insurers. They do not discriminate against foreign insurers and are well within the police power. (*California v. Thompson*, 310 U. S. 109.)

We have not overlooked appellant's contention that under the surplus line law even a licensed surplus line broker could not have placed the risk here involved with a non-admitted insurer. This contention is untenable. As it involves a construction of the surplus line law, its unsoundness will be shown in the following discussion of the surplus line law.

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business exposed the public or those dealing with him to the danger of loss".

(f) He "has knowingly misrepresented the terms or effect of an insurance policy or contract while acting in the course of his business".

(The foregoing subdivisions are taken from Section 1731. The section is made applicable to applicants by Section 1732.)

B. THE SURPLUS LINE LAW PERMITTED THE PLACING OF THIS RISK WITH A NONADMITTED INSURER BY OR THROUGH A SURPLUS LINE BROKER; IT IS A VALID EXERCISE OF THE POLICE POWER.

Appellant states that O'Lein could not obtain insurance from any admitted insurer and contends that even a surplus line broker could not procure insurance from First National for O'Lein because the premium charge was less than that of an admitted insurer. (Appellant's Opening Brief, 8.)

Analysis of the Surplus Line Law completely refutes this contention. Insurance Code Section 1763 provides, in part:

> "1763. A surplus line broker may solicit and place insurance, other than as excepted in Section 1761, with nonadmitted insurers only if such insurance can not be procured from a majority of the insurers admitted for the particular class or classes of insurance. Such part of the insurance as can not be so procured may be procured from nonadmitted insurers, if the insurance is not placed in a nonadmitted insurer for the purpose of procuring a rate lower than the lowest rate which will be accepted by any admitted insurer * * *"

Appellant's premise is that O'Lein could not get insurance from any admitted insurer. If this were so, the condition of the first sentence of Section 1763, that insurance may be placed with a nonadmitted insurer only when it cannot be procured from a majority of the insurers admitted for the class, would have been met.

The second sentence above quoted is in the nature of a proviso to the first sentence. In effect the provision is that even though a majority of the admitted insurers will

not accept the risk, if any admitted insurer will accept it, the risk cannot be placed with a nonadmitted insurer for the purpose of procuring a lower rate. Note that the language is not that the risk cannot be placed at a lower rate. It is that it may not be placed with a nonadmitted insurer "for the *purpose* of procuring a lower rate than the lowest rate which will be accepted by any admitted insurer".

In this case it is obvious that if O'Lein could not procure insurance from any admitted insurer the *purpose* in placing it with a nonadmitted insurer would not be to procure a rate lower than the lowest rate at which the risk would be accepted by any admitted insurer, for there is no such rate. Rather the purpose would be to procure insurance at any rate.

Another complete and irrefutable answer to the contention that the risk could not have been placed with First National because its rate was lower than that of any admitted insurer is that there is no evidence in the record that the First National rate was lower than the lowest rate of any admitted insurer for the risk here involved.

The foregoing analysis demonstrates that if O'Lein could not procure insurance from any admitted insurer, a surplus line broker could have placed the risk with First National or any other nonadmitted insurer at any rate. It has been shown in our discussion of the general licensing laws that a person licensed as agent or broker under Section 1642 could have participated in the placing of this risk with any nonadmitted insurer through a surplus line broker. Thus, in the transaction involved in this case, if

O'Lein could not procure insurance from any admitted insurer, there were three licenses available to appellant and two methods by which he might lawfully have procured for O'Lein the insurance involved.

There is no evidence in the record that appellant ever applied for, was refused, or was qualified for, any of the three licenses under which he could have participated in the transaction for which he was convicted. There is no evidence in the record that he could not have qualified for and procured an appropriate license and thus lawfully have performed the acts he did. On this record appellant is in no position to claim that the Surplus Line Law unconstitutionally discriminated against him or First National.

Appellant's contention really is that in a case which is not before this Court and may never arise, the Surplus Line Law would unconstitutionally prohibit a surplus line broker from placing insurance with a nonadmitted insurer in either of two cases:

1. Where the insurance is obtainable from a majority of the admitted insurers.

2. Where the insurance is not obtainable from a majority of the admitted insurers and it is placed with a nonadmitted insurer for the purpose of procuring a rate lower than the lowest rate of any admitted insurer.

Because this is not such a case, the power of the state to impose these restrictions upon a surplus line broker is not in issue in this case. But even if these restrictions were in issue, they are a valid exercise of the police power.

As will be demonstrated in our discussion under heading D, page 23, for the purpose of protecting its people from an insurance transaction which is against the public interest the state may prohibit the doing of any acts within the state in aid of such a transaction.

The Surplus Line Law is an exception to the prohibition against persons acting within California for a nonadmitted insurer which has not demonstrated that the insurance it offers is in the public interest.

e exception is not made for the benefit of nonadmitted insurers. It is made for the benefit of the people of the state. If the insurance can be obtained from a majority of the admitted insurers, a surplus line broker cannot place it with a nonadmitted insurer under any conditions. The reason is obvious: if a majority of the admitted insurers are willing to accept the risk, the Legislature has a right to assume that there is nothing unusual or extra hazardous about it, and it is reasonable for the Legislature to refuse to permit a licensee to aid an insurer that has not demonstated that its insurance is sound.

If a majority of the admitted insurers cannot or will not accept the risk two possibilities are evident: (1) The amount at risk is so large that the admitted insurers cannot absorb all of it; or (2) The hazard is such that the risk is not desirable to the majority.

Where the risk is so large that all of it cannot be placed with admitted insurers, it is obvious that the purpose of placing the excess with nonadmitted insurers is to procure the best insurance available under the circumstances. Rate is immaterial.

Where the risk is not desirable to the majority of admitted insurers but any admitted insurer will accept it, there is a restricted local market. The surplus line broker is the convenient door to a broader market. He is licensed by the state. To the average man he bears the seal of approval of the state. Such a man would believe that the insurance a state licensee sells must be sound or the state would not permit the licensee to sell it.

But the state has no certain way of knowing that the nonadmitted insurance is sound. It has therefore adopted the best means available. If a surplus line broker places insurance with a nonadmitted insurer at a rate equal to or higher than that of an admitted insurer an inference may be drawn that he is placing it with the nonadmitted insurer because he is seeking insurance more suitable to his client's needs than is available from the limited admitted market.

Such an inference need not be drawn if the surplus line broker places the insurance with a nonadmitted insurer at a lower rate. It is then possible that he is selling inferior insurance with the seal of state approval. If the surplus line broker can demonstrate that the procurement of the lower rate is not the sole purpose of placing the insurance with the nonadmitted insurer he may place the insurance at the lower rate. If he cannot, the state is justified in not permitting the use of its seal of approval for the placing of insurance with insurers that have not met its tests, for if the state were to permit surplus line brokers to sell insurance in nonadmitted insurers at rates lower than the lowest available from admitted insurers *solely* for the purpose of procuring the lower rate it would expose its people to the very dangers its regulatory laws

seek to prevent. The choice between admitted insurers that have met the state's requirements and the nonadmitted insurers that have not would not be made on the basis of the quality of the insurance or other valid factors, but on price alone.

It is no answer to suggest that in a particular case the quality of the nonadmitted insurance at the lower rate may be equal to that of the admitted insurance. It may be. Even where a majority will accept the risk, the nonadmitted insurance may be "just as good" but a surplus line broker cannot place it at any rate. Such consequences result whenever a line is drawn. It is sufficient that there be some reasonable relationship between the means chosen and the object. In any case the *insured* may place insurance directly with a nonadmitted insurer, but in doing so he is not relying on the state to protect him. The nonadmitted insurer has failed to meet the supervisory standards which the state imposes on admitted insurers. In addition, it offers the insurance at a rate lower than that offered by an insurer so admitted. In view of the inevitable connection between rate and solvency, where these circumstances concur, the state may properly, under its police power say to the citizen, "You may take your own risks, but this transaction is one in which our licensees, who are required in their persons and in their business to meet certain standards, should not participate. Do your business your own way. But the state will not lend the prestige of the standards applicable to its licensees to the transaction." (Ins. C. 1760.)

The nonadmitted insurer cannot complain, for the exceptions are not made for its benefit. If it is not able or willing to meet the state's tests, it is not entitled to act through licensees approved by the state.

C. CALIFORNIA HAS NOT DISCRIMINATED AGAINST INSURERS OF THE TYPE ROBERTSON REPRESENTED.

Appellant contends that "a local statute which discriminates * * * between local companies and those engaged in interstate commerce is void" and that "the law of the State of California which will admit only those life insurance companies whose bookkeeping system is on a legal reserve basis in that state, and is, at the same time, allowing a group of insurance companies in that state to operate on the non-legal reserve basis is void as applied to transactions in interstate commerce". (Appellant's Opening Brief, p. 10.) His conclusion is that this makes void the laws requiring the qualification and regulation of persons engaged in the sale of insurance in California.

We have already indicated these contentions are not at issue because appellant could have procured any one of three licenses and have lawfully performed the acts thereunder for which he was convicted and because there is no evidence in the record upon which it can be determined whether or not the company would be entitled to admission. There being no such evidence, certainly appellant cannot properly contend that California's admission laws apply to and discriminate against First National. Even if appellant's contentions were correct and appellant's contentions were at issue the following discussion will show that there was and is no unconstitutional discrimination.

From the policy (R. 29-31) it is apparent that this insurer issues policies for a fixed premium but is entitled and required to assess its policyholders if necessary to

pay claims. Appellant implies that it operates on a non-legal reserve basis. (Appellant's Opening Brief, p. 10.)

Prior to 1940 an insurer operating on a non-legal reserve basis and issuing policies on that basis could be organized in this state and foreign insurers of that type could be admitted under Chapter 9, Part 2, Division 2, of the Insurance Code. As is pointed out in detail in appellee's brief (pp. 24-37) the experience in California with this type of company and policy had been very unsatisfactory and the legislature from time to time had strengthened the controls applicable and in 1939 finally concluded to prohibit the admission after January 1, 1940 of any more insurers of that type, whether domestic or foreign. It is claimed by appellant that these laws discriminate against foreign insurers because they permit the continued operation of this type of insurer under Chapter 9. The implication is that there is no difference between appellant's company and those that are now operating under Chapter 9. This is not the case, as will be seen from the following controls which have been made applicable to the Chapter 9 insurers admitted before 1940 and now operating in California.

In 1941 Section 10870 of the Insurance Code was amended to require that on all policies issued by Chapter 9 companies after December 31, 1941, reserves must be maintained on *a legal reserve basis.* In addition other salutary controls have been enacted. Section 10830.5 limits the amount of liabilities that may be assumed on any one life risk to $3000, or ten per cent of the surplus of the insurer. Section 10830.6 applies a similar limitation to disability insurance. Section 10831 requires the

filing of "management or general agency contracts" with the Insurance Commissioner, and Section 10831.5 regulates the payment of salaries in excess of $3600 annually. Section 10832 seeks to remedy abuses that have been found to exist in the securing of proxies. Other sections regulate the policy forms, investments and maintenance of assets.

Except for the $200,000 surplus requirement applicable to other mutual insurers (Ins. C. 10510), this type of insurer is now subject to even greater control than are other mutual insurers. Apparently appellant contends that because California permitted existing companies to continue, albeit under much stricter control and under the requirements of higher standards, an unconstitutional discrimination against the company he represented resulted. Any difference in treatment has a reasonable and justifiable basis. The legislature was confronted with the fact that thousands of persons had policies issued by this type of carrier. Many had held them for a number of years and were, through the ordinary vicissitudes of life and the passage of time, uninsurable. If the legislature had the power to do so, and had revoked the corporate charters of these insurers, these people would have been left without insurance. As has been seen the legislature chose to ameliorate the existing conditions as much as possible.

As a result, since 1940 the status of admitted Chapter 9 companies has changed considerably. California tried to handle the situation in a fair and practical manner for the best interests of the foreign and domestic policyholders of those foreign and domestic Chapter 9 companies, and at the same time to afford adequate protec-

tion to new policyholders. This historical background discloses that there is a reasonable basis for distinction between companies already operating in California prior to 1940 and those seeking admittance subsequently. It further discloses that under the present controls the existing Chapter 9 companies are operating under such higher standards as to place them in a much different status than formerly. There is no evidence in the record as to the financial condition of the First National or as to the standards it is required to meet in Arizona. A search of the Arizona statutes has failed to disclose any controls comparable to those presently contained in Chapter 9 or even to those applicable prior to 1940. How then can it be said that California has unconstitutionally discriminated against the First National? (For a comparison of the two statutes, see Arizona Statutes, 1943, Ch. 95; Arizona Code Annotated, 1939, 1943 Pocket Part, P. 402.)

The appellant has not shown that the First National could qualify for admission under present Chapter 9 nor under Chapter 9 as it existed prior to 1940, and has not sustained the burden of demonstrating an unconstitutional discrimination.

Any contention that, because in the public interest it has been deemed necessary to permit existing insurers to continue to operate, a state must permit new ones to be formed and admitted on the same basis would prevent all progress toward higher standards and better business practices. The Courts have approved the imposition of higher standards to new entrants. This is a common occurrence when higher examination standards or educa-

tional requirements are imposed on new applicants, or building code requirements have been made more strict. (See *Wilson v. Maryland*, 218 U. S. 173; *Euclid v. Amber Realty Co.*, 272 U. S. 365; *Corier v. Fox*, 274 U. S. 603.)

D. A STATE MAY IN THE VALID EXERCISE OF THE POLICE POWER PROHIBIT THE DOING OF ANY ACTS WITHIN THE STATE IN AID OF AN INSURANCE TRANSACTION WHICH IS AGAINST THE PUBLIC INTEREST, WHETHER IN INTERSTATE COMMERCE OR NOT.

We have shown that under the law pertaining to the facts in this case, the state did not prohibit the transaction involved. It merely required one acting within the state in such a transaction to possess one of several licenses and to comply with applicable regulations. In addition, First National could have completed the transaction directly with O'Lein by mail without sending a salesman to urge him to buy, and no California law would have been violated. (Insurance Code, Section 1760.)

Thus it cannot be said that the state completely prohibited First National from engaging in interstate commerce in insurance with persons in this state. At most these laws regulated, and to that extent necessarily and properly interfered with, appellant's participation in the actual transaction involved here.

Appellant as an individual was prohibited from engaging in this transaction because he had not demonstrated his qualifications for and obtained any one of three licenses.

Even if the California law entirely prohibited persons within this state from participating or assisting in the sale

of the insurance here involved, it does not follow that such a prohibition would be invalid.

California has established financial requirements as a condition precedent to the admission of domestic and foreign insurers and enacted certain laws as to the conduct of that business. This is entirely proper. (*State Farm Mutual Auto v. Duel*, 324 U. S. 154.)

Similar exercise of the police power in order to protect persons within a state from being induced to purchase worthless securities or securities of doubtful value has been sustained by this Court. (*Hall v. Geiger-Jones Co.*, 242 U. S. 529; *Merrick v. Halsey & Co.*, 242 U. S. 568.) In the Blue Sky cases the Court sustained statutes authorizing an executive agency to prohibit the sale within the state if it is found "that the sale of such securities would work a fraud upon the purchasers thereof". (37 S. Ct. 227, at 232.) The California legislature after an exhaustive study as demonstrated in appellee's brief (pp. 24-37) has determined that the sale of insurance backed up only by less surplus and reserves than its present requirements has been against the best interests of the insuring public.

On the record before this Court there is no showing that the action of the legislature was arbitrary, oppressive or unreasonable. The legislature was exercising the same power that this Court has held that the legislature may delegate to an executive officer: the power to prevent fraud. The sale of a security may work a fraud on the purchaser because there is no real value behind it; how much greater is the fraud where there is no value to back up an insurance contract. In the case of a security the purchaser loses only the purchase price. Where in-

surance proves worthless, the loss of the premium is immaterial compared to the loss of the expected proceeds or indemnity, if the event insured against occurs.

We are not contending that the legislature can prohibit all intrastate and interstate commerce in insurance. The legislature has not prohibited First National from transacting insurance within the state. It has merely set reasonable standards for the transaction of life insurance within the state. The record is bare of any suggestion that First National is or is not capable of complying, or has ever sought to comply, with those standards.

Public Law 15, 79th Congress (59 Stat. 33) is quoted in appellee's brief, and is discussed by both parties. While the law was not enacted prior to appellant's acts, it is a definite declaration by Congress that the regulatory insurance laws of the states not only are and will continue to be, but *have been*, essential to the public interest.

VII. CONCLUSION.

There is no evidence that the type of policy issued to O'Lein and the rate charged therefor wouldn't have qualified such insurance for placement with a nonadmitted insurer by California surplus line brokers or by California agents or brokers through California surplus line brokers.

There is no evidence that appellant could not have obtained a surplus line broker's license or an agent's or broker's license.

There is no evidence that appellant could not have legally participated in the O'Lein-First National Insurance transaction under such licenses.

There is no evidence that First National was a class of insurer which would have been denied admission to do business in California under California laws.

There is no evidence that First National at the time of the transaction could have qualified for admission under laws applicable prior to January 1, 1940.

The O'Lein-First National transaction could have been completed by direct dealings between insured and insurer.

Therefore, it cannot properly be contended that (1) California's Surplus Line law unconstitutionally prohibited *First National* from engaging in interstate commerce, or unconstitutionally discriminated against *First National* in favor of other nonadmitted insurers, or that (2) California's admission laws unconstitutionally prohibited *First National* from engaging in interstate commerce or unconstitutionally discriminated against *First National* in favor of admitted insurers.

On the record, therefore, the only question at issue is whether California can constitutionally require a person to meet reasonable competency and trustworthiness standards as conditions precedent to participating in insurance transactions between a California resident and a foreign nonadmitted insurer. We contend that California has the power to do so. (*California v. Thompson*, supra.)

Although we have taken the position that appellant's contentions are for the most part erroneous and that all the other issues he seeks to raise are not before the Court, we have nevertheless gone outside the issues here involved and demonstrated that:

1. The Surplus Line law does not unconstitutionally prohibit interstate commerce.

2. It does not unconstitutionally discriminate between various classes of nonadmitted insurers.

California's admission laws which prohibit insurers not admitted to do business in California before January 1, 1940 from doing an assessment type insurance business through persons in California without meeting California's minimum reserve and surplus requirements, are not an unconstitutional prohibition and do not unconstitutionally discriminate against nonadmitted insurers.

The California insurance laws discussed herein do not violate the commerce clause, the equal protection clause, or any other provision of the Constitution of the United States, but, on the contrary, they are the kind of state legislation which this Court has found to be essential for the protection of the public, in the absence of conflicting federal legislation covering the same field.

We submit, therefore, that the judgment should be affirmed.

Dated, San Francisco, California,
January 2, 1946.

Respectfully submitted,

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(Appendix Follows.)

INSURANCE CODE SECTIONS.

31. "Insurance agent" means a person authorized, by
d on behalf of an insurer, to transact insurance.

33. "Insurance broker" means a person who, for com-
nsation and on behalf of another person, transacts
surance other than life with, but not on behalf of, an
surer.

39. If any provision of this code, or the application
ereof to any person or circumstance, is held invalid, the
mainder of the code, or the application of such, pro-
ion to other persons or circumstances, shall not be
fected thereby.

700. A person shall not transact any class of insur-
ce business in this State without first being admitted
r such class. Such admission is secured by procuring
certificate of authority from the commissioner. Such
rtificate shall not be granted until the applicant con-
rms to the requirements of this code and of the laws
this State prerequisite to its issue. After such issue
e holder shall continue to comply with the require-
nts as to its business set forth in this code and in
e laws of this State.

703. Except when performed by a surplus line broker,
e following acts are misdemeanors when done in this
ate:

(a) Acting as agent for a nonadmitted insurer in the
nsaction of insurance business in this State.

(b) In any manner advertising a nonadmitted insurer in this State.

(c) In any other manner aiding a nonadmitted insurer to transact insurance business in this State.

In addition to any penalty provided for commission of misdemeanors, a person violating any provision of this section shall forfeit to this State the sum of five hundred dollars ($500), together with one hundred dollars ($100) for each month or fraction thereof during which he continues such violation.

ARTICLE 1. AGENTS', BROKERS' AND SOLICITORS' QUALIFICATIONS. (Ch. 5, Pt. 2, Div. 1.)

1639. The purpose of this chapter is to protect the public by requiring and maintaining professional standards of conduct on the part of all insurance agents and insurance brokers acting as such within this State.

(Added by Stats. 1941, Ch. 23. In effect February 4, 1941.)

1640. This article shall not affect:

(a) Employees of title insurers or persons engaged in the business of examining, certifying, or abstracting titles when no commission is paid such employees or persons transacting insurance.

(b) Mortgage insurers or their solicitors or agents.

(c) Fraternal benefit societies or their solicitors or agents.

(d) Reciprocal or interinsurance exchanges, or their attorneys, solicitors, agents or employees, except as provided by Chapter 3 of this part.

(e) Any insurer admitted to transact life insurance, or life and disability insurance, or the agents, solicitors or employees of any such insurer, or agents licensed under the provisions of Article 2 of this chapter.

(f) Surplus line brokers.

(g) Persons whose employment does not include the solicitation, negotiation, or affecting of contracts of insurance and who do not sign policies or other evidences of insurance.

(h) Officers of insurers and salaried traveling employees of the type commonly known as special agents, while performing duties and exercising functions such as are commonly performed by special agents, if such persons:

(1) Do not effect insurance.

(2) Solicit or negotiate insurance only as a part of and in connection with the business of an insurance agent or broker licensed under this chapter.

(i) Persons directly employed by an insurer at its home or branch office, who do not solicit or negotiate insurance and who receive no commissions, and who may as part of their regular employment sign policies or other evidences of insurance.

(j) Bail agents and bail solicitors.

(Amended by Stats. 1937, Ch. 652; by Stats. 1937, Ch. 654; and by Stats. 1941, Ch. 673.)

1641. The provisions of this article shall not prohibit a broker licensed thereunder from transacting life insur-

ance and receiving a commission therefor if he is licensed to transact life insurance.

(Amended by Stats. 1941, Ch. 23. In effect February 4, 1941.)

1642. A person shall not act as an insurance agent, broker, or solicitor until a license is obtained from the commissioner, authorizing such a person so to act.

1643. Such license shall be obtained only on a written application in a form prescribed by the commissioner, stating the kinds of insurance which the applicant desires to transact. The commissioner may decline to act upon an incomplete or defective application until amendments or an amended application are filed with him which complete the prescribed form and are properly executed. He may prescribe the form of such amendments or amended application.

(Amended by Stats. 1937, Ch. 652.)

1644. Every applicant for a license to act as an insurance broker shall file with the application or maintain in effect a satisfactory bond to the people of the State of California, duly executed by an admitted surety insurer, approved by the commissioner in the amount of one thousand dollars ($1,000). Such bond may be continuous in form and the total aggregate liability on such bond shall be limited to the payment of one thousand dollars ($1,000). Such bond shall be contingent on the accounting by the broker to any person requesting the broker to obtain insurance, for moneys or premiums collected by the broker for insurance other than life.

Said bond shall remain in force and effect until the surety is released from liability by the commissioner, or until said bond is canceled by the surety. The surety may cancel said bond and be relieved of further liability thereunder by delivering 30 days' written notice to the commissioner. Such cancellation shall not affect any liability incurred or accrued thereunder prior to the termination of said 30-day period.

(Amended by Stats. 1937, Ch. 732.)

1645. Every application by a copartnership, association or corporation for a license to act as an insurance agent or broker shall state the names of the members, officers or employees of the applicant who intend to exercise the power and perform the duties of the agency or brokership. Such application shall also contain an agreement by all of the members of the copartnership or of an officer empowered to bind the association or corporation, that in the event the applicant is granted the license, only those persons designated in the license will transact insurance authorized under the license. A nonresident of this State shall not be named to exercise such powers in respect to any such licensee.

(Amended by Stats. 1939, Ch. 325.)

1645.5. After June 30, 1942, unincorporated associations and nonprofit corporations which do not possess a valid and unrevoked certificate of authority issued pursuant to Part 5, Division 2, of this code are not eligible for license or for renewal of license under this article unless all the members of the association or nonprofit

corporation possess individual licenses to transact insurance or are named and qualified to exercise the agency or brokership powers of the association or nonprofit corporation at all times.

The license of an association or nonprofit corporation may be revoked or suspended whenever it appears to the commissioner that the condition of its membership is such that it would not be eligible for license as a new applicant.

(Added by Stats. 1941, Ch. 23. In effect February 4, 1941.)

1646. The natural persons named in an application under Section 1645 shall, if the applicant is not already licensed as an insurance broker or agent, take and pass the qualifying examination provided by this code. Where one or more of the persons named fails to pass the examination, the license may be issued with the agreement of the applicant that the names of such persons be omitted from the list of those empowered to transact insurance under the license.

1647. Whenever a copartnership, association or corporation, licensed as an agent or broker, desires to change, or add to, the persons who are to transact insurance under authority of its license, it shall immediately notify the commissioner, requesting that indorsement issue changing its license accordingly.

(Amended by Stats. 1937, Ch. 652.)

1648. The commissioner shall require that the qualifying examination provided by this code be taken by

any persons named by such a business organization to transact insurance who are not named in the last previous application of the applicant and who, if they were applying for individual licenses to exercise the agency or brokership powers possessed by the business organization, would be required to take and pass the qualifying examination.

(Amended by Stats. 1941, Ch. 23. In effect February 4, 1941.)

1648.3. Before being permitted to take the qualifying examination for license to act as an insurance broker or to qualify to exercise the brokership powers of a corporation, association or partnership, an applicant or a person named to exercise such brokership powers shall have either:

(a) Successfully completed a course or courses of study approved as to method of instruction and content by the commissioner, covering the principal branches of the insurance business and requiring not less than 50 hours of classroom work or the equivalent thereof in correspondence work; or

(b) Been regularly employed by an insurance company, insurance broker, or an insurance agent, or licensed under this article, for a period or periods aggregating not less than one year during the three years next preceding the date of application, in responsible insurance duties relating to classes of insurance other than life; provided, that time spent in military service shall be excluded in computing such three-year period; and he

shall submit affidavits stating facts which show compliance with this requirement.

Such course or courses either (1) shall be given by a degree conferring college or university which has, when such course is taken by such individual, a curriculum or curricula approved by the commissioner, whether such course be given as part of any such curriculum or separately or (2) shall have been given by any other institution which maintains equivalent satisfactory standards of instruction, and which shall have been approved for such purpose by the commissioner.

The commissioner shall not approve any curricula, whether given by a degree conferring college or university, a correspondence school, or any other institution, unless it includes instruction in: Classes of insurance except life insurance; the fundamental characteristics of each of the types of insurers admitted to transact insurance in California; the laws of the State of California relating to the transaction of insurance by insurance agents, brokers and solicitors; and such other subjects as the commissioner finds to be necessary to qualify a person to discharge his responsibilities as an insurance broker or to exercise brokership powers.

This section shall be applicable to all persons required to take the qualifying examination for a license to act as an insurance broker, or to qualify to exercise the brokership powers of a corporation, association or partnership, who make application for said licenses or to so qualify after January 1, 1944.

(Added by Stats. 1943, Ch. 330.)

1648.5. The commissioner shall not grant a license to act as an agent or broker:

(a) To any individual who is neither a citizen or national of the United States nor an applicant for such citizenship who has lawfully and properly filed a proper declaration or application therefor in a Court constituted by a law of the United States, unless such person is licensed under this chapter when this section takes effect.

(b) To any minor.

(c) To any copartnership, association or corporation if any person named in the application to exercise agency or brokership powers can not be licensed under subdivision (a) or (b) of this section.

(Added by Stats. 1937, Ch. 652.)

1648.6. Resident salaried employees and officers, exclusive of directors, of admitted insurers may be granted a limited broker's license. The limited broker's license authorizes the transaction of insurance as a broker on risks not located in this State.

Such employees or officers shall not be licensed as brokers other than as provided in this section.

(Added by Stats. 1939, Ch. 221; amended by Stats. 1941, Ch. 23. In effect February 4, 1941.)

1648.7. Licenses authorized by this chapter shall not be issued to any insurer or reciprocal or interinsurance exchange.

(Added by Stats. 1941, Ch. 23. In effect February 4, 1941.)

1649. The commissioner shall investigate the qualifications of the applicants. Except as otherwise prescribed in this article he may issue the license applied for to an applicant on a showing satisfactory to him that the following facts exist:

(a) The applicant is properly qualified to perform the duties of an insurance agent, broker, or solicitor.

(b) Granting the license will not be against public interest.

(c) The applicant intends actively and in good faith to carry on the business of insurance agent, broker, or solicitor.

(d) In the case of a corporate applicant, the articles of incorporation permit it to act as an insurance agent or broker.

(e) In the case of an association or copartnership applying for such a license, its articles of association or agreement of partnership do not forbid it from so acting.

(f) The license is not being secured for the purpose of writing of insurance as to which the right to take commission is limited by Section 760, at a cost less than specified in such contracts.

(g) In the case of a person who has not held a license to act as an insurance agent, broker, or solicitor, covering the license period preceding the period covered by the license applied for, the applicant has within six months preceding the date of issue of the license, taken and passed the qualifying examination provided in this article.

(h) The applicant is of good business reputation.

(Amended by Stats. 1937, Ch. 652.)

1650. Every license to act as an insurance agent, broker, or solicitor, as the case may be, shall state on its face:

(a) The name of the licensee.

(b) That he is licensed so to act.

(c) The location of the principal office in this State of the licensee by street address, city, or town, if any, and by county.

(d) The conditions, if any, on which the license is issued.

1651. Every license to act as such an agent, broker, or solicitor shall be prominently displayed in the office of the licensee.

1652. The insurance solicitor's license shall be issued to, and shall remain in the possession of, the employing agent or broker until canceled, or until the licensee withdraws from the employ. Immediately upon the withdrawal the employer shall return the solicitor's license to the commissioner for cancellation. If unable to return the license, the employer shall furnish evidence of loss or destruction satisfactory to the commissioner, who shall thereupon cancel the license and shall enter the cancellation in his records. After such cancellation and upon notifying the commissioner in writing of change of office, or change of employer, the solicitor is entitled to the issuance without charge of a new license for the unexpired period.

1653. A solicitor shall not represent that he is an insurance agent for any insurer, or that he is an insurance broker.

1654. A license to act as an insurance solicitor shall not be issued until the applicant files with the commissioner a written statement of an insurance agent or broker, stating that the applicant, when licensed, will be employed by the broker or agent, with the duties and powers of an insurance solicitor.

1655. Pending the issuance of a solicitor's license after examination of the applicant, and during periods when it is canceled by termination or change of employment, the applicant or solicitor, upon request, is entitled to a certificate from the commissioner stating that a license will be issued to its holder upon the filing of the required statement of employment.

1656. Before receiving a license to act as an insurance agent, an applicant shall file with the commissioner a document executed by an insurer or its authorized representative admitted to do insurance other than life, appointing the applicant, upon licensing, its agent in this State. Such appointment shall, by its terms, continue in force until a document executed by the insurer, its representative, or the applicant or appointee, expressly terminating such appointment is filed with the commissioner.

(Amended by Stats. 1937, Ch. 652.)

1656.5. Documents executed by an insurer or its authorized representative appointing the applicant as its agent in this State shall be filed with the commissioner

in duplicate. The commissioner shall retain one copy of the document and forward the other copy to the agent at his last known address as shown on the records of the commissioner. At any time an agent may notify the commissioner that he is no longer acting as agent for a specified insurer, and the commissioner shall thereupon cause his records to reflect that fact.

(Added by Stats. 1943, Ch. 857.)

1657. In order to terminate the appointment of an agent, an insurer shall file with the commissioner in duplicate a notice of termination of appointment and the commissioner shall forthwith transmit a copy of such termination to the agent whose appointment is thus terminated. Upon receiving notice of the termination of the agency, from the licensee or from the licensee's principal, the commissioner shall cancel the agency appointment.

(Amended by Stats. 1943, Ch. 857.)

1658. Pending the filing of an appointment with the commissioner, whether after termination of an agency or otherwise, a person otherwise qualified under the provisions of this article to act as an insurance agent, is entitled to have issued to him a certificate executed by the commissioner and stating that upon the filing of such an appointment a license to act as insurance agent will be issued.

1659. Any insurance agent, broker or solicitor, upon paying the fee therefor and filing the proper bond, statement of employment, or appointment, as the case may

be, is entitled to be licensed to act in one of the other two specified capacities. But only a natural person may act as a solicitor, and a person shall not at the same time be licensed to act as a solicitor and also as an agent or as a broker.

(Amended by Stats. 1941, Ch. 311.)

1660. An insurance agent may be a broker with relation to insurers for which he is not an agent, but in order to act as a broker he must also be licensed as such.

1661. In determining the period, prescribed in Section 1649, within which the applicant must have held a license or taken examination in order to be licensed, full time service in the armed forces of the United States or in any governmental capacity during time of war, or continuously but commencing during time of war, shall be excluded.

(Amended by Stats. 1937, Ch. 652.)

1662. (Amended by Stats. 1937, Ch. 652; repealed by Stats. 1939, Ch. 928.)

1663. Every insurance broker or agent shall keep complete records of all business done under the authority of his license, and of the collection of all premiums and the names of all persons licensed under this code from whom business is accepted or to whom commissions are promised or paid. These records shall be open to inspection or examination by the commissioner at all times.

The commissioner may at any time require the broker or agent to furnish to the commissioner, in such manner

and form as the commissioner requires, any information required to be kept in such records.

(Amended by Stats. 1937, Ch. 652.)

1664. Except in the case of a nonresident broker, every insurance agent or broker shall maintain an office in this State for the transaction of business. Applications for license or renewal of license as insurance agent or broker shall specify the address of the office at which the records required by Section 1663 are kept. The records shall be kept at such address. A licensee shall notify the commissioner in writing of any change in such address.

(Amended by Stats. 1941, Ch. 23. In effect February 4, 1941.)

1665. (Repealed by Stats. 1937, Ch. 652.)

1666. When licenses, certificates pending issue of licenses, or certificates of convenience have been issued by the commissioner in accordance with this article, the commissioner shall compile the names and addresses of agents so certified. Such compilation shall be made in such a manner that the names of duly authorized agents and their respective insurers may be conveniently ascertained. The commissioner shall allow any person, upon request, to inspect the list thus compiled.

1667. (Repealed by Stats. 1937, Ch. 652.)

1668. A person whose license is revoked by the commissioner shall not be issued any license under this article for a period of one year after the revocation. If any such license issued to a copartnership, association or cor-

poration is revoked, a member of the copartnership or officer or director of the corporation shall not be entitled to such a license for the same period of time, unless the commissioner finds that such member, officer, or director was not in any way personally at fault in the matter on account of which the license was revoked.

1669. (Repealed by Stats. 1937, Ch. 652.)

1670. A violation of any of the provisions of this article by any insurance solicitor or employee of any licensed agent or broker shall not cause a suspension or revocation of the license of the employer of such solicitor or employee unless it appears to the commissioner, upon a hearing, after reasonable notice to such employer, that the employer permitted such violation. This provision shall not relieve the employer from civil liability or his surety from liability under the bond filed as provided in this article.

(Amended by Stats. 1941, Ch. 23. In effect February 4, 1941.)

1671. The completion or delivery of a declaration or certificate of coverage under a running inland marine insurance contract evidencing coverage thereunder does not require licensing under this code, if

(a) The person completing or delivering such certificate or declaration does not receive any commission or such insurance, directly or indirectly, and

(b) The person completing or delivering such certificate or declaration or his employer has an insurable

interest in the risk evidenced by the certificate or declaration.

(Amended by Stats. 1941, Ch. 23, and Stats. 1941, Ch. 673.)

1671.2. The following employees of a licensed insurance agent or broker shall not be considered as acting as insurance agents, brokers or solicitors:

(a) Those who are regularly salaried administrative or clerical employees and who devote substantially all of their services to activities other than the solicitation of insurance from the insuring public and who receive no commission on insurance, directly or indirectly.

(b) Those who are salesmen who devote substantially all of their activities to selling merchandise and whose solicitation of insurance is limited only to the quoting of a premium for insurance, to be included in the purchase price, covering the interest retained in such merchandise by the seller, and who receive no commission on insurance, directly or indirectly.

(Added by Stats. 1941, Ch. 673.)

1672. Upon the application of a nonresident that is duly licensed to transact insurance other than life under the laws of the State wherein such an applicant resides, if the State in which the applicant resides does not prohibit residents of this State from acting as an insurance broker therein, the commissioner may issue to such applicant a license to act as an insurance broker in this State upon the payment of the fee prescribed in this article. The issue of such license shall be subject, how-

ever, to the same qualifications, requirements and restrictions as apply to residents of this State, except that the applicant shall not be required to maintain an office in this State for the transaction of an insurance business.

1673. The commissioner may, in his discretion, accept in lieu of examination of such nonresident applicant, a certificate of the insurance authority of the State of the applicant's residence to the effect that the applicant has the following qualifications:

(a) Experience or training.

(b) Reasonable familiarity with the insurance laws of this State and with the provisions, terms and conditions of the insurance which the applicant proposes to transact.

(c) A fair and general understanding of the obligations and duties of an insurance broker.

1674. The commissioner shall conduct or arrange for a written examination, to be given at least twice a year upon questions, prepared by the commissioner, as to the qualifications of applicants or members or officers of applicants to act as insurance agent, broker or solicitor.

1675. The examination shall be of sufficient scope to satisfy the commissioner that the applicants have sufficient knowledge of, and are reasonably familiar with, the insurance laws of the State and with the provisions, terms and conditions of the insurance which the license will authorize them to transact and have a general and fair understanding of the obligations and duties of an insurance agent, broker or solicitor.

(Amended by Stats. 1937, Ch. 652.)

1676. A license shall not be issued under this article to any person required to pass an examination, until such examination has been passed, but the commissioner may issue to an applicant, who has never theretofore held or been named in a license or certificate of convenience a certificate of convenience, operative for a period not extending beyond six months from issuance permitting such applicant to act as agent, or solicitor, as the case may be, pending a fulfillment of the examination requirements. Such certificate does not permit the holder thereof to transact insurance, nor to participate directly or indirectly in any commission paid thereunder or therefor, covering himself or any person specified in Section 760.

(Amended by Stats. 1937, Ch. 652.)

1677. Failure by an applicant to take the examination pursuant to notification by the commissioner of time and place of the examination constitutes a failure to fulfill the examination requirements. Upon such failure by the holder, all privileges under any certificate of convenience shall terminate. In such case, also, the commissioner may require the cancellation of any or all contracts of insurance transacted by or through such applicant under authority of his certificate of convenience.

(Amended by Stats. 1937, Ch. 652.)

1667.1. The commissioner may cancel a certificate of authority of any insurer for failure to comply with an

order to cancel insurance effected pursuant to Section 1677.

(Added by Stats. 1937, Ch. 652.)

1677.5. The commissioner may issue a certificate of convenience to the executor or administrator of the estate of a deceased agent or broker, permitting such party, as such representative, to act as an agent or broker in the conduct of the business of the estate for a period of one year from and after the date of death pending, but not later than, disposal of the business.

(Added by Stats. 1937, Ch. 652.)

1678. The commissioner shall require in advance the following fees:

(a) For filing the application for each annual license of an individual insurance broker, ten dollars ($10).

(b) For filing the application for each annual license of an individual agent or solicitor, four dollars ($4).

(c) For giving to any person the qualifying examination for a license under this article, five dollars ($5).

(d) For filing the application for a license of a nonresident broker, one hundred dollars ($100).

(e) For filing the application for each annual license of a copartnership, association, or domestic corporation as an insurance broker, ten dollars ($10) for each person named therein to exercise the brokership powers.

(f) For filing the application for each annual license of a copartnership, association, or domestic corporation

as an insurance agent, four dollars ($4) for each person named therein to exercise the agency powers.

(g) For filing the first amendment to an application or for filing the first amended application, one dollar ($1).

(h) For filing the application for an endorsement adding to the persons named in a license as entitled to exercise agency powers, four dollars ($4) for each name so added.

(i) For filing the application for an endorsement removing from any license the name of any person theretofore designated as entitled to exercise agency or brokership powers, one dollar ($1).

(j) For filing the application for an endorsement adding to the persons named in a license as entitled to exercise brokerage powers, ten dollars ($10) for each name so added.

(k) For filing the application for a certificate of convenience, the same fee as for filing the application for a license to act in the same capacity.

(l) For filing the application for each annual license of a foreign corporation as an insurance agent, fifty dollars ($50) plus four dollars ($4) for each person named therein to exercise the agency powers.

(m) For filing the application for each annual license of a foreign corporation as an insurance broker, fifty dollars ($50) plus ten dollars ($10) for each person named therein to exercise the brokership powers.

(Amended by Stats. 1939, Ch. 452. In effect June 6, 1939.)

1679. (a) Unless sooner suspended, revoked, or terminated, the license of every insurance agent, broker, or solicitor expires July 1st of each year unless application for renewal is filed as provided in subdivision (b).

(b) Application for renewal of such license may be filed on or before June 3d, upon payment of the renewal fee.

(c) Such license may be renewed upon application filed between June 3d and July 31st upon payment of the renewal fee plus an additional fee equal to the renewal fee.

(d) The commissioner shall mail notice for forfeiture of renewal rights not later than July 20th, to:

(1) The licensee.

(2) The employing agent or broker, if any.

(3) The appointing insurers, if any.

Failure to mail such notice shall not continue the right of renewal.

(e) Such license shall not be renewed after July 31st, but the person may make application for a new license as provided in this code, and shall take and pass the qualifying examination.

(Amended by Stats. 1939, Ch. 452, and Stats. 1939, Ch. 928; amended by Stats. 1941, Ch. 23, and Stats. 1941, Ch. 514. In effect May 30, 1941.)

1679.2. If a holder of a certificate of convenience becomes entitled to a permanent license after the June

30th following issuance of his certificate, a permanent license shall be issued to him upon payment of the fee required for filing application for renewal of such a permanent license. If he fails to pay this fee within 60 days after notice of eligibility for permanent license he forfeits his right to permanent license and all privileges under his certificate of convenience terminate.

(Added by Stats. 1941, Ch. 23. In effect February 4, 1941.)

1679.5. After any hearing involving the suspension, revocation, or denial of a license to act as an insurance agent, broker or solicitor, the commissioner may determine that the licensee shall prove his qualifications before any renewal of his then existing license or future issuance to him of any license to act as an insurance agent, broker or solicitor. Upon such determination, the commission shall, by order, require that the licensee take and pass a qualifying examination before such renewal or such issuance. Such examination may be in lieu of any other action, or, except in the case of revocation, may be in addition to any other action by the commissioner. The examination shall be the same as the qualifying examination provided in this article and shall be given by the commissioner without fee.

(Added by Stats. 1939, Ch. 928.)

1680. Any person who acts, offers to act, or assumes to act, as an insurance agent, broker or solicitor without a valid and subsisting license so to act, is guilty of a misdemeanor.

1731. The commissioner may suspend or revoke any license of an insurance agent, broker, or solicitor, life agent, surplus line broker or motor club agent if, after a hearing upon reasonable notice, he determines that any of the following facts exist in respect to any person authorized to act under such license:

(a) Such person has violated any provision of law relating to conduct of business which could lawfully be done only under authority conferred by such license.

(b) Such person has knowingly or wilfully made a misstatement in an application to the commissioner for a license or in a document filed in support of such an application, or has obtained his license by concealment or knowing misrepresentation.

(c) The purpose of obtaining such license was to evade or prevent the enforcement of any provision of this code or other insurance laws.

(d) Such person has engaged in a fraudulent practice or conducts his business in a dishonest manner.

(e) Such person has shown that he was incompetent or untrustworthy in the conduct of his business or has by commission of a wrongful act or practice in the course of his business exposed the public or those dealing with him to the danger of loss.

(f) Such person has knowingly misrepresented the terms or effect of an insurance policy or contract while acting in the course of his business.

(g) Such person has failed to perform a duty expressly enjoined upon him by a provision of this code, or has committed an act expressly forbidden by such a provision.

(h) Such person has committed a public offense, shown by a final judgment of conviction, having as one of its necessary elements a fraudulent act or an act of dishonesty in acceptance, custody, or payment of money or property. Upon any conviction of such offense, the commissioner may suspend the license of the person so convicted until the judgment is made final or other final judgment issues.

(i) Such person has aided or abetted any person in an act or omission which would constitute grounds for suspension, revocation, or refusal of license to the person aided or abetted.

(j) Such person has permitted any person in his employ to violate any provision of this code.

(Added by Stats. 1937, Ch. 652; amended by Stats. 1941, Ch. 23. In effect February 4, 1941.)

1732. In addition to any other matters required to be shown to him in order to obtain a license to act as an insurance agent, broker, solicitor, or life agent, surplus line broker or motor club agent, the commissioner may refuse to grant any such license unless the applicant makes a showing satisfactory to him that none of the facts specified in Section 1731 exist in respect to the applicant or its members.

(Added by Stats. 1937, Ch. 652.)

1760. Any citizen of this State may negotiate and effect insurance on his own property with any nonadmitted insurer.

1760.5. The provisions of this chapter limiting the insurance which may be placed with nonadmitted insurers and requiring any report thereof shall not apply to:

(a) Reinsurance of the liability of an admitted insurer.

(b) Insurance against perils of navigation, transit or transportation upon hulls, freights or disbursements, or other ship-owner interests; upon goods, wares, merchandise and all other personal property and interests therein, in course of exportation from or importation into any country, or transportation coastwise, including transportation by land or water from point of origin to final destination and including war risks; and marine builder's risks, dry docks and marine railways, including insurance of ship repairer's liability and protection and indemnity insurance, but excluding insurance covering bridges or tunnels.

(c) Aircraft insurance.

(d) Insurance on property or operations of railroads engaged in interstate commerce.

The insurances specified in the foregoing paragraphs (b), (c), and (d), may be placed with a nonadmitted insurer only by and through a special lines' surplus line broker. The license of a special lines' surplus line broker shall be applied for and procured and shall be subject to the same fees for filing on issuance in the same man-

ner as the license of a surplus line broker, except that in lieu of the bond required by subdivision (b) of Section 1765, there shall be delivered to the commissioner a bond in the form, amounts, and conditions specified in Section 1644 of this code and only one fee shall be collected from one person for both licenses. Such license in respect to such business shall be subject to all the provisions of this chapter except Sections 1761, 1763 and 1775.5.

The commissioner may, in respect to business written or placed under the provisions of this section, require such information and reports thereof as he considers necessary, convenient or advisable for tax or statistical purposes.

Each placing of insurance in violation of this chapter is a misdemeanor.

The commissioner may revoke, suspend or deny any license or certificate of authority granted pursuant to this code whenever he finds, after reasonable notice and hearing, that the licensee or holder of the certificate has committed a violation of this section.

The premium for insurance placed by or through a special lines surplus line broker pursuant to this section shall not be subject to the tax imposed upon such broker based upon gross premiums paid for insurance placed under authority conferred by his license.

(Added by Stats. 1937, Ch. 729.)

1761. Except as provided in Sections 1760 and 1760.5, a person within this State shall not transact any insurance on property located or operations conducted within,

or on the lives or persons of residents of this State with nonadmitted insurers, except by and through a surplus line broker licensed under this chapter and upon the terms and conditions prescribed in this chapter.

(Amended by Stats. 1937, Ch. 729.)

1762. (Repealed by Stats. 1937, Ch. 729.)

1763. A surplus line broker may solicit and place insurance, other than as excepted in Section 1761, with nonadmitted insurers only if such insurance can not be procured from a majority of the insurers admitted for the particular class or classes of insurance. Such part of the insurance as can not be so procured may be procured from nonadmitted insurers, if the insurance is not placed in a nonadmitted insurer for the purpose of procuring a rate lower than the lowest rate which will be accepted by any admitted insurer. It shall be conclusively presumed that insurance is placed in violation of this paragraph where the insurance is actually placed with a nonadmitted insurer at a lower rate of premium or lower premium than the lowest rate of premium or the lowest premium which could be obtained from an admitted insurer unless, at the time such insurance attaches, there is filed with the commissioner a statement describing the insurance, specifying the rate and the nearest procurable rates from admitted insurers. Unless the commissioner within five days after such filing notifies the filing broker that in his opinion the placing of the insurance constitutes a violation of this section, the broker may thereafter maintain in effect such insurance. If within such five-day period the commissioner notifies the surplus line broker that such insurance is in viola-

tion of this section and orders the broker to effect termination of such insurance within 10 days from such notice, and the broker fails or refuses to effect such termination, such failure or refusal is a violation of this section. Statements filed under this section shall not be subject to public inspection unless the commissioner determines that the public interest or the welfare of the filing broker requires that any statement be made so subject. The commissioner may make and publish reasonable rules and regulations, consistent with this chapter, in respect to transactions governed thereby and the basis or bases for his determinations hereunder.

(Amended by Stats. 1937, Ch. 729.)

1764. (Repealed by Stats. 1937, Ch. 729.)

1765. Upon application in such form as the commissioner prescribes, the commissioner shall issue a license authorizing any applicant that is trustworthy and competent to transact an insurance brokerage business in such manner as to safeguard the interest of the insured, to act as a surplus line broker from the date of such license until the first day of July succeeding, on the delivery to the commissioner of a bond to the State of California in the sum of five thousand dollars ($5,000) with an admitted surety insurer conditioned that said licensee will fully and faithfully comply with the requirements of this chapter.

The commissioner shall charge and collect in advance a fee of fifty dollars ($50) for filing each application for license to act as a surplus line broker.

(Amended by Stats. 1939, Ch. 452. In effect June 6, 1939.)

1766. If in the opinion of the commissioner the solvency of any surety on a bond required in this chapter has become impaired or doubtful, he shall notify the broker, and unless within 10 days after receipt of such notice the solvency of such surety is proved to the satisfaction of the commissioner, or a new bond is substituted therefor, the commissioner shall revoke the license of the broker.

1767. A surplus line broker shall maintain in good faith an office in this State.

1768. Such broker shall keep in said office complete books of the business transacted by him, with nonadmitted insurers under his license as a surplus line broker, showing:

(a) The effective dates of such insurance.

(b) The names of the insurers and of the insured.

(c) The gross premium payable therefor.

(d) The terms and character of insurance and location of the subject matter.

(e) Statements in the same detail as in the case of insurance in effect, of all such insurance canceled or on which premiums have been increased or reduced, and the amounts of additional or of return premiums thereon.

1769. Whenever required so to do by the commissioner, such surplus line broker shall furnish to the commissioner a list of the majority of the admitted insurers from which the entire amount of insurance desired was not obtainable.

1770. The commissioner, whenever he deems necessary, may examine the books and accounts of any surplus line broker for the purpose of determining whether or not the broker is conducting his business in accordance with the provisions of this chapter. For the purpose of making such examination such broker shall allow the commissioner free access at all times to all the broker's books and papers, and the commissioner shall thoroughly inspect and examine all of the broker's affairs.

1771. All examinations by the commissioner shall be at the expense of the surplus line broker, such expenses to be paid in advance. If any such broker refuses to pay such expenses in advance, the commissioner may refuse to issue a renewal of the license of such broker and shall revoke the license of the broker.

1772. (Repealed by Stats. 1937, Ch. 729.)

1773. (Repealed by Stats. 1937, Ch. 729.)

1774. On or before the first day of March of each year the surplus line broker shall file with the commissioner a sworn statement of all business transacted under his license during the last preceding calendar year. Such statement shall contain accounts of:

(a) The gross amount of insurance procured from and placed with nonadmitted insurers during the calendar year.

(b) The gross premium charged therefor, including additional insurance premium.

(c) The gross amount of all insurance canceled during said year.

(d) The gross return premiums thereof.

(e) Any additional premiums charged and the gross premiums returned during that calendar year on insurance previously effected.

1775. All such reports and statements shall be made on blanks furnished to the surplus line broker by the commissioner on application therefor.

1775.5. Every surplus line broker shall annually, on or before the first day of July of each year pay to the Insurance Commissioner for the use of the State of California a tax of 3 per cent of the gross premiums upon business done by him under authority of his license during the preceding calendar year, less 3 per cent of return premiums paid by him by reason of cancellation or reduction of premium, excluding gross premiums paid and return premiums paid by him upon business governed by the provisions of Section 1760.5.

For the purpose of determining such tax, the total premium charged for all such nonadmitted insurance placed in a single transaction with one underwriter or group of underwriters, whether in one or more policies, shall be allocated to this State in such proportion as the total premium on the insured properties or operations in this State, as computed on the exposure in this State on the basis of any single standard rating method in use in all States or countries where such insurance applies, bears to the total premium so computed in all States or countries in which such nonadmitted insurance may apply. This provision shall not apply to interstate motor transit operations conducted between this and other

States. With respect to such operations surplus line tax shall be payable on the entire premium charged on all nonadmitted insurance, less

A. Such portion of the premium as is determined, as herein provided, to have been charged for operations in other States taxing such premium on operations in such States of an insured maintaining its headquarters office in this State;

B. The premium for any operations outside of this State of an insured who maintains a headquarters operating office outside of this State and a branch office in this State.

A penalty of 1 per cent shall be added for each calendar month or fraction thereof after said first day of July during which such tax or any portion thereof remains unpaid, except that the commissioner may remit the penalty in a case where the commissioner finds, as a result of examination or otherwise, that the failure of or delay in payment arose out of excusable mistake or excusable inadvertence.

(Added by Stats. 1937, Ch. 729.)

1776. Any surplus line broker who wilfully fails or refuses to report to the commissioner any insurance on subject matter located within this State placed under his name with nonadmitted insurers, or who, by wilful omission from the records required to be maintained by him for such purpose, attempts to evade the payment of taxes on any such insurance, is, in addition to being required to pay the tax, together with a penalty equal in amount to the tax, guilty of a misdemeanor.

It is a misdemeanor for any surplus line broker or special lines' surplus line broker to accept or pay directly or indirectly any consideration or remuneration for or in connection with the placing of insurance which, if done by a person within this State, is governed by the provisions of this chapter, when such placing was not done by a person licensed therefor pursuant to this chapter.

It is a misdemeanor for any agent or broker to solicit, negotiate or effect any insurance governed by the provisions of this chapter in nonadmitted insurers, except by and through a surplus line broker or special lines' surplus line broker licensed pursuant to this chapter. Except in the case of insurance specified in paragraph (b) of Section 1760.5, it is a misdemeanor for any surplus line broker or special lines' surplus line broker to accept, place, pay, or permit the payment of commission or other remuneration on insurance placed by him under authority of his license to any person other than one holding a license to act as an insurance agent, insurance broker, surplus line broker, or special lines' surplus line broker, except that such business may be accepted by such surplus line broker or special lines' surplus line broker directly from an assured or other person who would likewise be entitled to place the same directly with an admitted insurer without the solicitation, negotiation or effecting thereof by an insurance agent or broker.

The commissioner may deny, suspend or revoke any license issued pursuant to this code if he finds after proper notice and hearing that the licensee has violated any provision of this section.

The permission granted in this chapter to place any insurance in a nonadmitted insurer shall not be deemed or construed to authorize any such insurer to do business in this State.

(Amended by Stats. 1937, Ch. 729.)

1777. The following acts shall constitute a termination of the authority of a surplus line broker, and shall constitute revocation of his license, whether or not the commissioner formally revokes the same:

(a) The removal of the broker's office from this State.

(b) The removal of the accounts of his business from this State.

(c) The closing of his office for a period of more than 20 consecutive days.

(d) Wilful failure or refusal to perform any of the other duties specified in this chapter.

1778. When a surplus line broker's license is revoked for any reason other than the insufficiency of his sureties, a new license shall not be issued to him within one year after such revocation and until all indebtedness of the broker on former business has been paid to the commissioner.

1779. Every insured for whom insurance has been effected with nonadmitted insurers shall, upon request in writing by the commissioner, produce for the commissioner's examination all policies, contracts, and other documents evidencing such insurance, and shall disclose to the commissioner the amount of the gross premiums

paid or agreed to be paid for such insurance. For refusal to obey such request, such insured shall forfeit to the State of California the sum of two hundred dollars ($200) for each refusal.

CHAPTER 9. MUTUAL LIFE AND DISABILITY INSURANCE ON THE STIPULATE PREMIUM PLAN, WITH PROVISION FOR ASSESSMENTS. (Pt. 2, Div. 2.)

10818. On and after January 1, 1940, no new insurer may be organized or admitted to operate under this chapter. Nothing herein contained shall prohibit an insurer theretofore existing under or by virtue of this chapter from transforming to an insurer operating under the provisions of Chapter 9a of this part nor shall anything herein contained prohibit an association now operating under Chapter 8 of this part from transforming to an insurer operating under this chapter at times and in the manner provided in Chapter 8. Any corporation formed pursuant to Section 10815, which, prior to January 1, 1940, exhibits proof satisfactory to the commissioner that it has procured 100 subscribers or applicants who have each paid the required initial premium, and which also deposits with the commissioner on or before January 1, 1940, the sum of one thousand dollars ($1,000) as a payment on its statutory deposit, may be admitted on completion of its organization and statutory deposit on or before July 1, 1940.

(Repealed by Stats. 1935, Ch. 282; added by Stats. 1939, Ch. 327.)

10830.5. An insurer transacting insurance under this chapter shall not assume liabilities for life insurance on the life of any one person in excess of three thou-

sand dollars ($3,000) or 10 per cent of the surplus of the insurer arising from its life insurance business, whichever is greater, without at once reinsuring the excess in an admitted insurer.

"Surplus," as used in this section, means the amount, as shown by the last annual statement of the insurer on file with the commissioner, by which the assets of the life insurance department of such insurer exceed the liabilities of such department for losses reported, expenses, taxes, all other indebtedness and the amount of reserves required by this chapter.

(Added by Stats. 1941, Ch. 617.)

10830.6. An insurer transacting insurance under this chapter shall not assume liabilities for disability insurance on the life or health of any one person in excess of three thousand dollars ($3,000) or 10 per cent of the surplus of the insurer arising from its disability insurance business, whichever is greater, without at once reinsuring the excess in an admitted insurer.

"Surplus," as used in this section, means the amount, as shown by the last annual statement of the insurer on file with the commissioner, by which the assets of the disability insurance department of such insurer exceed the liabilities of such department for losses reported, expenses, taxes, all other indebtedness and the amount of reserves required by this chapter or by the commissioner.

(Added by Stats. 1941, Ch. 617.)

10831.5. An insurer subject to this chapter shall not pay or agree to pay to any person a salary exceeding

the sum of three thousand six hundred dollars ($3,600) annually, unless such action is authorized by the affirmative votes of more than half the number of persons elected to and serving on its board of directors. The minutes of the meeting of the board of directors at which such an act is authorized shall state the duties to be performed for such salary and name the person who is to be so employed.

A certified copy of the minutes of the meeting at which any such salary is approved shall be filed with the commissioner within 10 days after the meeting.

(Added by Stats. 1941, Ch. 617.)

10870. Every insurer subject to the provisions of this chapter shall hold and maintain, upon every contract of life insurance issued on and after the date upon which it becomes subject to the provisions of this chapter, and prior to January 1, 1942, assets in excess of other liabilities, to provide for reserves not less than the minimum tabular reserves prescribed in subdivision (a). The statutory deposit required by law may be considered as a part of such reserves or of other required policy reserves.

(a) The basis for minimum reserves shall be the American Experience Table of Mortality, with Farr's Table No. 3 or Craig's Extension for ages under 10, and interest at 4 per centum per annum; provided, however, that contracts issued on a weekly premium basis and providing therein for valuation according to the Standard Industrial Table of Mortality and interest at 4 per centum per annum shall be valued according to

such industrial table of mortality and rate of interest. Such contracts may provide for not more than one year preliminary term insurance by incorporating therein a clause plainly showing that the first year's insurance under such contracts is term insurance, purchased by the whole or a part of the premiums to be received during the first contract year, and such contracts may be valued on the basis of the mortality table and interest rate above prescribed by the preliminary term plan; provided, however, that the reserve according to such standard for the first to the fifth policy years, inclusive, may be reduced by the following percentages: First year, 80 per cent; second year, 80 per cent; third year, 60 per cent; fourth year, 40 per cent; fifth year, 20 per cent; and provided further, that at no time shall the reserve be less than the value of any nonforfeiture provision contained in the policy.

(b) Every insurer subject to this chapter shall hold and maintain upon every contract of life insurance issued after December 31, 1941, assets in excess of other liabilities, to provide for reserves not less than minimum tabular reserves prescribed in this subdivision. The basis for computing the reserves required by this subdivision shall be the American Experience Table of Mortality with Farr's Table No. 3 or Craig's Extension for ages under 10, with interest at a rate of not more than 3½ nor less than 2½ per cent per annum. At the option of the insurer, its reserves may be computed by the modified preliminary term method described in subdivision (c).

(c) Life insurance policies may provide for not more than one year of preliminary term insurance by incor-

porating in the provision thereof specifying the premium consideration to be received by the insurer, a clause plainly showing that the first year's insurance under such policies is term insurance, purchased by the whole or a part of the premium to be received during the first policy year. Such policies may, in accordance with their terms be valued on the basis of the mortality tables and interest rates prescribed in subdivision (b) by the modified preliminary term plan described in subdivision (d).

(d) If the actuarial net preliminary term renewal premium in the case of

(1) Insurance under a limited-payment life preliminary term policy providing for the payment of all premiums thereon within less than 20 years from the date thereof; or

(2) Endowment insurance under an endowment preliminary term policy,

exceeds the actuarial net preliminary term renewal premium, calculated on the same table of mortality and rate of interest, for a 20-payment life policy, the reserve on such policy specified under (1) or (2) of this subdivision (d), as the case may be, at the end of any year, including the first, shall not be less than the sum of the reserve on a 20-payment life preliminary term policy issued at the same time on a life of the same age and the actuarial net level premium reserve for a pure endowment maturing at the end of the premium payment period, equal to the excess of the full net level premium reserve, at the end of such premium payment pe-

riod, on such policy specified under (1) or (2) of this subdivision (d), as the case may be, over the reserve, at the end of such premium payment period, of such 20-payment life preliminary term policy.

The premium payment period herein referred to is 20 years or the period, if less, during which premiums are actually payable under such policy specified in (1) or (2) of this subdivision (d), as the case may be.

(e) As used in subdivision (d), the term "20-payment life preliminary term policy" means a life insurance policy embodying all of the following attributes:

(1) It is whole-life insurance;

(2) The premium charged is payable annually or at lesser intervals until 20 annual premiums or a proportionately greater number of premiums payable at intervals less than one year shall have been paid, or until the prior death of the insured;

(3) The first year's insurance is term insurance purchased by the whole or part of the premium to be received during the first contract year.

In computing reserves as required by this section, no allowance or reduction may be made in consideration of the fact that members may be assessed to make up a deficiency. The statutory deposit required by law may be considered as a part of such reserves or of other required policy reserves.

This section exclusively fixes the life insurance reserve requirements for insurers subject to this chapter.

(Added by Stats. 1935, Ch. 282; amended by Stats. 1941, Ch. 617.)

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SUPREME COURT OF THE UNITED STATES.

No. 274.—October Term, 1945.

F. O. Robertson, Appellant, vs. The People of the State of California. } Appeal from the Superior Court of Ventura County, State of California.

[June 3, 1946.]

Mr. Justice Rutledge delivered the opinion of the Court.

This case differs from *Prudential Insurance Co.* v. *Benjamin*, No. 707, decided this day, in three respects. It is a criminal cause; the statutes involved regulate, rather than simply tax, the business of insurance; and appellant's acts held to violate them were done before the McCarran Act's[1] effective date.

Appellant was convicted in a state court for violating §§ 703(a) and 1642 of the California Insurance Code and the conviction was sustained on appeal to the Superior Court of Ventura County.[2] Appellant now urges here primarily that the application which has been made of those sections is a regulation of interstate commerce forbidden by the commerce clause of the Constitution, Article I, § 8, in view of *United States* v. *South-Eastern Underwriters Ass'n*, 322 U. S. 533. He also puts forward due process and equal protection arguments, resting on his conception of the applicability of those provisions of the Fourteenth Amendment.[3]

The California Insurance Code provisions are as follows:

> "703. Except when performed by a surplus line broker, the following acts are misdemeanors when done in this State:
> "(a) Acting as agent for a nonadmitted insurer in the transaction of insurance business in this State."

[1] Public Law 15, 79th Cong., 1st Sess., c. 20, approved March 9, 1945; 15 U. S. C. §§ 1101-1115. See text *infra*, following note 32.

[2] The conviction was obtained in the Justice's Court of Ventura Township, California. The Superior Court of Ventura County was the highest court of the state to which appeal could be taken. Its opinion is not reported. The penalty was a fine of $100 imposed for violating each count.

[3] In the Statement of Appeal filed in the Superior Court the grounds relied upon, apart from commerce clause and local law objections, were only that appellant's acts "were, if true, done by him in accordance with the provisions of the Fourteenth Amendment to the Constitution of the United States . . ." and that §§ 703(a) and 1642 "are unconstitutional and in violation of . . . the Fourteenth Amendment. . . ."

"1642. A person shall not act as an insurance agent, broker or solicitor until a license is obtained from the Commissioner, authorizing such person so to act."[4]

The complaint charged in two counts that appellant had (1) acted without a license as an agent for a nonadmitted insurer in soliciting and selling a policy contrary to § 703(a), and (2) solicited and sold a policy of insurance without being licensed as required by § 1642.

The evidence, which is undisputed, disclosed the following facts: The First National Benefit Society is an Arizona corporation, conducting from Phoenix a mutual benefit type of insurance business. Its method of operation must be inferred from the facts of record, in the absence of other evidence. One O'Lein, then an elderly resident of Ventura, California, had difficulty in securing insurance on account of his age. Prior to August 28, 1944, he had learned of the Society's "Gold Seal" policy, by radio and through "literature." This apparently was mailed from the home office and included a printed form of return postal card marked, presumably pursuant to postal permit, "Postage will be Paid by Addressee," the Society. O'Lein filled in and returned the card to the Society in Phoenix, asking it to "send me, without obligation, details of 'GOLD SEAL' POLICIES." A few days later, on August 28, 1944, appellant called at O'Lein's home with the card, stating he represented the First National Benefit Society. Thereupon he explained to O'Lein the terms of the policy, its benefits, and costs, soliciting and persuading the prospect to take out a policy for himself and one also for his wife. No medical examination was required. Appellant filled in the application forms, procured the signatures, accepted from O'Lein a check made out in appellant's name in payment of the first quarterly premiums, gave receipts, later cashed the check at a local bank, and received the proceeds. A few days later the O'Leins received policies by mail from the Society's office in Phoenix.

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[4] Deering's California Codes, Insurance Code of California, §§ 703, 1642. These sections are part of California's comprehensive regulatory scheme for the business of insurance; and are directly related, in the case of § 703, to the requirements laid by other sections for acting as surplus line broker, see text *infra*; and in that of § 1642 to such requirements for securing a license to act in the specified representative capacities, see text *infra*.

The evidence further showed that the Society was not admitted o do business in California and that appellant had no license f any kind to act as an insurance agent, broker or solicitor there. We may deal first exclusively with the objections founded on he commerce clause, since each of the others would be obviously ithout merit but for the supposed effects of the *South-Eastern* ecision[5] not only in relation to the prohibitory consequences of at clause but also, apparently, to resurrect other limitations pon state power long since settled adversely to such claims in eference to the business of insurance.[6]

I.

Little need be said in relation to the general license require- ent of § 1642, except to state more fully its effects by virtue f its relation to other provisions of the California Insurance ode, which prescribe the conditions for securing the license. hose requirements, in summary, are that an application must e made upon a prescribed form setting forth the kinds of insur- nce the applicant desires to transact (§ 1643); he must be a itizen of the United States or one who has applied for citizen- hip; and must have attained his majority (§ 1648.5); he must ass a written examination as to his qualifications (§ 1674) and ay two fees, one a filing fee of $4, the other an examination fee of 5 (§ 1678). On his fulfilling these conditions the license is issued f the state commissioner of insurance is satisfied that he is quali- ed and intends in good faith to carry on the business (§ 1649). Section 1639 declares that the purpose of these and other pro- isions of the Code is "to protect the public by requiring and aintaining professional standards on the part of all insurance

[5] But see 322 U. S. 533, 547 ff.

[6] Thus, it was long settled, under the doctrine of Paul *v.* Virginia, 8 Wall. 8, that neither due process nor equal protection of the laws forbids the nd of state regulation of the business of insurance imposed by §§ 703(a) d 1642. Hooper *v.* California, 155 U. S. 648; Nutting *v.* Massachusetts, 3 U. S. 553. See also Hoopeston Co. *v.* Cullen, 318 U. S. 313, and text fra at note 32.

As to the dangers of blurring the due process and equal protection limita- ns with commerce clause ideas, and the consequent necessity for separate eatment in disposing of these problems, see Ribble, State and National wer over Commerce (1937) 98; Nippert *v.* Richmond, 66 S. Ct. 586, 589- 0; McLeod *v.* Dilworth, 322 U. S. 327, dissenting opinion at 357. Cf. also thlehem Motors Corp. *v.* Flynt, 256 U. S. 421; Henderson, The Position of reign Corporations in American Constitutional Law (1918) 122; and see IX.

agents acting as such within this State." The statutory requirements apply to all agents, without discrimination, whether they represent California or out-of-state insurance companies and whether the business done is interstate or local in character. They apply only to agents acting in California, not to acts done outside the state.

Appellant has not sought to obtain a license under the Code provisions, has not been denied one, and has not attacked any particular requirement. His charge is wholesale, not particular. It is, in effect, that since the entire series of acts done by him was directed to the conclusion of an interstate transaction, within the *South-Eastern* ruling, those acts though taking place altogether within California were inseparably a part of the interstate transaction and therefore beyond reach of the state's licensing or regulatory power. The contention appears to contemplate not only that appellant's acts were interstate commerce, but also that the state cannot impose any licensing requirement upon them or, it would seem, upon any phase of conducting an interstate insurance business through agents acting in person.

To state the argument in this way is in effect to answer it. We accept the regulation for what it purports to be on its face and by the statute's express declaration, namely, a series of regulations designed and reasonably adapted to protect the public from fraud, misrepresentation, incompetence and sharp practice which falls short of minimum standards of decency in the selling of insurance by personal solicitation and salesmanship. That such dangers may exist, may even be widely prevalent in the absence of such controls, is a matter of common knowledge and experience. And no argument is needed to show that these evils are most apt to arise in connection with the activities of the less reliable and responsible insurers, as well as insurance brokers or salesmen, and vitally affect the public interest.[7]

Such being the purpose and effect of § 1642, there can be no substantial question concerning its validity on commerce clause grounds. That is true whether appellant's acts are taken in their setting, as being "in" commerce or only as "affecting"

[7] See Hartford Accident & Indemnity Co. *v.* Nelson, 291 U. S. 352, 360; German Alliance Ins. Co. *v.* Lewis, 233 U. S. 381, 412-415; Osborn *v.* Ozlin, 310 U. S. 53, 65, 66; National Union Fire Ins. Co. *v.* Wanberg, 260 U. S. 251, 257. And see also United States *v.* South-Eastern Underwriters Ass'n, 322 U. S. 533, 539 ff.; Prudential Life Ins. Co. *v.* Benjamin, No. 707, decided this day.

it. For the case is ruled, so far as § 1642 is concerned, by decisions such as *California* v. *Thompson*, 313 U. S. 110; *Hartford Indemnity Co.* v. *Illinois*, 298 U. S. 155; *Smith* v. *Alabama*, 124 U. S. 465; *Nashville, C. & St. L. Ry. Co.* v. *Alabama*, 128 U. S. 96; and *Union Brokerage Co.* v. *Jensen*, 322 U. S. 202.[8]

If, in the absence of contrary action by Congress, a state may license agents or brokers for the sale of interstate transportation in order to prevent fraud, *California* v. *Thompson*, *supra*; trainmen engaged in interstate commerce to secure their competence, *Smith* v. *Alabama*, *supra*; *Nashville, C. & St. L. Ry. Co.* v. *Alabama*, *supra*; the sale on commission of interstate consignments of farm produce to secure honest dealing and financial responsibility, *Hartford Indemnity Co.* v. *Illinois*, *supra*; and the activities of customs brokers to secure responsibility in the state courts on claims arising locally, *Union Brokerage Co.* v. *Jensen*, *supra*, by the sorts of conditions imposed through the respective licensing provisions, there can be no valid reason for outlawing § 1642 here.

That appellant's activities were of a kind which vitally affect the welfare and security of the local community, the state and their residents could not be denied. Cf. *Hoopeston Co.* v. *Cullen*, 318 U. S. 313, 316 ff. They had in fact a highly "special interest" in his localized pursuit of this phase of the comprehensive process of conducting an interstate insurance business. Cf. *Union Brokerage Co.* v. *Jensen*, *supra*, at 212. Here, as in each of the instances cited, appellant's activities called in question were concentrated in the regulating state, although affecting or constituting interstate commerce. Moreover the licensing provision of § 1642 is regulatory, not exclusory in character; is not discriminatory; is not in conflict with any policy or action of Congress but rather accords with its expressed views in so far as the McCarran Act may be taken to be applicable;[9] and is designed appropriately to secure the public from those evils of uncontrolled insurance solicitation to which it is directed. In view of these facts the regulation "neither discriminates against nor substan-

[8] In some of these cases, e. g., Hartford Indemnity Co. v. Illinois, 298 U. S. 155, and Union Brokerage Co. v. Jensen, 322 U. S. 202, there were also federal licensing statutes which the Court found neither inconsistent with nor, therefore, effective to exclude the state licensing regulation. The Union Brokerage case involved an instance of state regulation of foreign commerce. In addition to the cited authorities, see also the decisions cited and relied upon in each of the opinions.

[9] See text *infra* following note 32.

tially obstructs the commerce." *California* v. *Thompson*, *supra*, at 114.

Furthermore, here as in the cited cases, "unless some measure of local control is permissible," the activities and their attendant evils "must go largely unregulated," unless or until Congress undertakes that function. *California* v. *Thompson*, *supra*, at 115. And in view of the well-known conditions of competition in this field, such a result not only would free out-of-state insurance companies and their representatives of the regulation's effect, thus giving them advantage over local competitors, but by so doing would tend to break down the system of regulation in its purely local operation.

II.

Section 703(a) is interwoven with different conditions and therefore has somewhat different effects than does § 1642. Unlike the latter, which applies to acting as agent for all insurers, it forbids acting as agent for nonadmitted insurers alone, unless the person so acting is a "surplus line broker."[10] To become a surplus line broker one must procure a special license pursuant to the requirements of § 1765. This license also is issued upon application, if the commissioner of insurance finds that the applicant is "trustworthy and competent to transact an insurance brokerage business in such a manner as to safeguard the interest of the insured." The applicant also must file with the commissioner a faithful performance bond in the amount of $500 and pay a filing fee of $50.

So far as concerns these requirements of § 1765 for procuring the surplus line broker's license, if they are considered without reference to any of the other Code provisions, the same conclusion is required concerning the validity of § 703(a) as for that of § 1642, by the authorities above cited and discussed. Indeed the filing fee of $50 is larger than the combined fees required by § 1642, but not more than the fee involved in the *Union Brokerage* case, *supra*. And the bond provision is substantially identical with that sustained in *California* v. *Thompson*, *supra*. In the absence of any showing that it is administered arbitrarily,

[10] See note 14, as to "surplus line insurance." In general this is insurance involving special risks or for some other reason not falling within the usual lines of authorized business.

the requirement that the license shall issue only after a finding of trustworthiness and competence by the commissioner cannot be taken to be other than an appropriate means of safeguarding the public against the obvious evils arising from the lack of those qualifications. *California* v. *Thompson, supra.* Considered separately from any relationship to other sections of the Code, therefore, the prescribed conditions for securing the surplus line broker's license are no more invalid than those which must be fulfilled to secure the general agent's license under § 1642.[11]

This the state contends is all that needs to be considered, since appellant neither possessed nor, so far as appears, had applied for or been denied a surplus line broker's license. Consequently, in its view, the validity of other provisions of the Code is not involved, either directly or by necessary relationship to § 703(a).[12]

III.

Appellant insists, however, that § 703(a) taken in conjunction with § 1765, is more than a licensing requirement for regulating the qualifications of agents acting in California in the transaction of the business covered by its terms. It is rather, he maintains, a prohibition of the writing of such insurance there by nonadmitted insurers and their agents. And this, he says, the state cannot do, both because it cannot exclude interstate commerce

[11] Appellant also points out that by § 1775.5 an annual tax equal to three per cent of the gross premiums upon business done during each calendar year is imposed upon each surplus line broker. Apart from the facts that appellant has not applied for such a license and that no effort has been made to collect this tax from appellant, so far as appears, it may be noted that the tax applies alike to all surplus line brokers, whether acting for domestic or admitted foreign insurers or for nonadmitted ones. No question as to the validity of this tax is presented by this record.

[12] Indeed the state argues that no question is raised concerning the validity of the requirements of § 1765 for procuring the surplus line broker's license since, "so far as this record shows, the life insurance sought to be effected in this case might or might not have been procurable from admitted insurers."

However, on the alternative basis of accepting appellant's view that the insurance would not have been so obtainable, California concedes the insurance would fall within the surplus line exception, but asserts that appellant, if he had obtained the license, could have acted as agent in the transaction. Hence, since he did not apply for the license, the state argues that § 1765 has not been applied to him and its validity is not involved.

Appellant, however, maintains that even if he had secured the license, the combined effects of § 703(a) and other sections relating to surplus line insurance would have forbidden him to act in this transaction. See text *infra* Part III. California maintains that the validity of other Code sections, apart from §§ 703(a) and 1642, was not in issue in the state courts and, though raised here in the briefs, is not necessarily involved.

in California and because it cannot discriminate against out-of-state insurers in such a manner.

These conclusions are based on the view that § 703(a) is related inseparably by its terms and in fact to other Code provisions in addition to § 1765, namely, those regulating the admission of foreign insurance corporations to do business in California[13] and the interwoven provisions regulating activities of surplus line brokers.[14] Section 703(a) on its face forbids acting as agent for nonadmitted insurers, except in the case of a surplus line broker. And the combined effects of the provisions relating to such brokers and of those governing the admission of foreign corporations are said to be to "absolutely prohibit" the writing of or aiding in procuring the type of insurance issued here or indeed of any insurance issued by the Society.[15]

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[13] See California Insurance Code §§ 1560-1607, 10818. Appellant relies particularly upon § 10818, prohibiting the organization or admission of new insurers after January 1, 1940, to operate as so-called "Chapter 9" companies, that is, among others, as mutual companies having less than the reserve requirements specified for such insurers operating on the assessment plan, but permitting previously organized or admitted companies to continue under specially imposed requirements. See text *infra* at notes 16, 21.

Pertinent also is § 700 of the Code providing: "A person shall not transact any class of insurance business in this State without first being admitted for such class," through securing a certificate of authority from the commissioner on compliance with the code's requirements.

[14] California Insurance Code, Chapter Six. Surplus Line Brokers. §§ 1760-1779.

Section 1761 reads: "Except as provided in Sections 1760 and 1760.5, a person within this State shall not transact any insurance on property located within, or on the lives or persons of residents of this State, with nonadmitted insurers, except by and through a surplus line broker licensed under this chapter and upon the terms and conditions prescribed in this chapter."

Section 1760 provides: "Any citizen of this State may negotiate and effect insurance on his own property with any nonadmitted insurer," cf. note 20, and § 1760.5 requires specified kinds of insurance, e. g., marine and aircraft risks, to be placed with nonadmitted insurers only through a "'special lines' surplus line broker."

By § 1763 a surplus line broker "may solicit and place insurance, other than as excepted in section 1761, with nonadmitted insurers only if such insurance can not be procured from a majority of the insurers admitted for the particular class or classes of insurance. Such part of the insurance as can not be so procured may be procured from nonadmitted insurers," if it is not so placed to secure a lower rate than the lowest any admitted insurer will accept. Stringent provisions for supervising the section's requirements by the commissioner are included.

Other sections require maintaining an office in the state (§ 1767), keeping records and making reports (§§ 1768, 1769, 1774), and provide criminal sanctions for violating the chapter's provisions, § 1776.

See as to surplus line brokers, Patterson, The Insurance Commissioner in the United States (1927) 188-190.

[15] The argument is not only various but somewhat devious. Appellant disclaims intention to maintain that the state cannot "regulate the insurance business" and goes on to rest on the general proposition that it cannot

California in effect concedes this, alternatively to maintaining that no question concerning the validity of those provisions is presented. The short effect of the admission provisions, for purposes now pertinent, the state admits, is to forbid either foreign or domestic companies to do a life insurance business in California other than on a legal reserve basis,[16] except as to companies engaged in doing such business there prior to January 1, 1940.[17] The policy underlying this exclusion is said to be founded in the state's experience showing that a mutual company doing business "on the stipulated premium plan with right of assessment,[18] without a sufficient surplus and full reserves is not adequately safeguarded to insure that money will be available to pay death benefits." In support of this statement of California's policy and the experience on which it is founded, counsel point to the Annual Reports of the Insurance Commissioner covering a period of some six years, from 1934 to 1940,[19] which re-

prohibit interstate commerce entirely and that the effect of the statutory provisions, particularly § 10818, see note 13 *supra*, is to do this. As will appear, the argument really comes down to maintaining that California cannot require foreign companies or their agents to comply with her minimum requirements for issuing the type of insurance issued here.

[16] By § 10510 of the Code, "An incorporated life insurer issuing policies on the reserve basis shall not transact life insurance in this State unless it has a paid-in capital of at least two hundred thousand dollars ($200,000)." Section 36 defines "paid-in capital" as including the surplus of a mutual insurer. The effect of the two sections, it is conceded in the state's brief, "is to require that a stock company have a capital stock aggregating at least $200,000 and that a mutual company have a surplus of at least $200,000 in order to do business in California." Both requirements apply to domestic and foreign companies alike, with the exceptions noted below in note 17.

[17] The exception was the result of a series of amendments to the Code, made from 1935 to 1939, designed gradually to restrict the operations in the state of companies operating without reserves, to enable such companies already engaged in business to build up reserves, and to forbid the organization or admission of new companies operating without them or with reserves below the minimum requirement. See Calif. Stat. 1935, cc. 282, 283, pp. 1002, 657, 667, 678; Stat. 1937, c. 726, p. 2024; Stat. 1939, c. 321, p. 1609. And see also the Annual Reports of the Insurance Commissioner, State of California, as follows: Sixty-sixth, 10-11; Sixty-eighth, XX; Sixty-ninth, XVII; Seventieth, XVIII; Seventy-first, XXIX; Seventy-third, XVII, XXII XXIII.

[18] The policy issued in this case contained the following provision in small type on the reverse side of the sheet: "The lawfully required portion of Premiums paid on this Certificate shall be set aside into the Mortuary Fund. Premiums necessary to maintain the Certificate in force are not fixed amounts and in event of Premium insufficiency may be adjusted, with the written approval of the Corporation Commission, for the purpose of payment of claims and general operating expenses. In the event of any emergency caused by excessive mortality the Corporation may, with the written consent or at the direction of the Corporation Commission, levy Assessments on Members to be placed in the Mortuary Fund."

[19] See note 17.

sulted in some of the legislation now called in question. See also X Report of Joint Insurance Investigation Committee (N. Y. 364-365 (1906); *Hoopeston Co.* v. *Cullen,* 318 U. S. 313, 321.

Furthermore, the state apparently concedes, as appellant contends, not only that the Society is excluded from transacting insurance business by the admission requirements and its failure to comply with them, but also that appellant would be forbidden to place insurance with it by the provisions relating to surplus line insurance, even if he had secured the surplus line broker's license.[20]

As we understand it, therefore, appellant's argument in this phase comes in substance to two things: (1) That the admission requirements and the surplus line broker provisions, as they relate to nonadmitted insurers and their agents, are invalid for discrimination against out-of-state insurers and in favor of domestic ones; (2) that California, as a result of the *South-Eastern* decision, no longer can require foreign insurance corporations seeking to do business there to maintain minimum reserves for protection of policyholders in the state or compel agents or brokers to refrain from representing them there notwithstanding such noncompliance.

The discrimination argument is without substance in so far as it maintains that the statutes permit domestic companies to operate without meeting these requirements, but forbid out-of-state insurers to do likewise. For, as has been noted,[21] the conditions apply alike to domestic and foreign corporations, excepting only those organized or admitted to do business in California before January 1, 1940. As to them different standards are applicable, but they too apply equally and alike to domestic and foreign insurers.[22]

That the state has seen fit to draw a ~~lone~~ line as of that date between new companies seeking to enter the field and established companies, differentiating the two classes by different standards in the minimum reserve requirements, in order to permit the latter

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[20] See § 1763, quoted in part in note 14, *supra,* and text *infra* at note 30. The type of insurance issued here is not within the exceptions specified in § 1763, which in turn relate to §§ 1760 and 1760.5. The former, it is to be noted, relates on its face only to property insurance; the latter to various special risks, not including mutual assessment insurance, which can be placed only by a "'special lines' surplus line broker." See note 14.

[21] See note 13.

[22] *Ibid.*

to continue in business and build up reserves,[23] does not involve any discrimination as between domestic and foreign or interstate and intrastate insurers. For each may be authorized to enter, and each to continue, on identical terms. Such a distinction does not become discriminatory, in any sense now pertinent, merely because the preexisting companies are allowed to continue their business under somewhat less burdensome reserve requirements than those under which new companies are permitted to enter. See X Report of Joint Insurance Investigation Committee (N. Y.) p. 365 (1906). Otherwise the state, having authorized either domestic or foreign companies to engage in the business, would be greatly restricted, perhaps foreclosed, in raising the reserve requirements as experience and the public interest might make necessary.[24]

Apart from this classification, which is clearly within the state's power, the discrimination argument becomes identical with the contention that the state cannot exclude foreign companies, such as the First National Benefit Society, or their agents, from carrying on their business in California for failure to meet her reserve requirements.

This is the crucial contention. It too is without merit. The evils flowing from irresponsible insurers and insurance certainly are not less than those arising from the activities of irresponsible, incompetent or dishonest insurance agents. The two things are concomitant, being merely different facades of the same sepulchre for the investments and security of the public. Cf. Study of Legal Reserve Life Insurance Companies, T. N. E. C. Monograph No. 28, Section XV. It would be idle to require licensing of insurance agents, in order to secure honesty and competence, yet to place no restraint upon the kind of insurance to be sold or the kinds of companies allowed to sell it, and then to cover their representatives with their immunity. This could only result in placing domestic and complying foreign insurers at great disadvantage and eventually in nullifying all controls unless or until Congress should take over the regulation.

No such consequence has followed from the *South-Eastern* decision. It did not wipe out the experience of the states in the

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[23] See the Reports of the Insurance Commissioner, cited in note 16.

[24] Cf. Queenside Hills Realty Co. *v.* Saxl, No. 769, decided April 22, 1946; Chicago & Alton R. Co. *v.* Tranbarger, 238 U. S. 67; Chicago, B. & Q. R. Co. *v.* Nebraska *ex rel.* Omaha, 170 U. S. 57.

regulation of the business of insurance or its effects for the continued validity of that regulation. Much of this was concerned with the activities of so-called foreign insurance companies and in particular, with requirements designed to secure minimum guaranties of solvency and ability to pay claims as they mature. Essentially the protection sought was against fly-by-night operators and the grosser forms of profiteering and financial mismanagement all too common in unregulated insurance activity. See generally Patterson, The Insurance Commissioner in the United States (1927).

It is true that California imposes her reserve standards, for both domestic and foreign insurers, by requiring them to secure a certificate of authority to do business issued upon compliance with those conditions, in other words, by a form of licensing. But we are far beyond the time when, if ever, the word "license" *per se* was a condemnation of state regulation of interstate business done within the state's borders.[25] The commerce involved here is not transportation. Nor is it of a sort which touches the state and its people so lightly that local regulation is inappropriate or interferes unreasonably with the commerce of other states.[26] Not the mere fact of form of licensing, but what the license stands for by way of regulation is important.[27] So also, it is not simply the fact of prohibition, but what is forbidden and for the protection of what interest, that is determinative. For the commerce clause is not a guaranty of the right to import into a state whatever one may please, absent a prohibition by Congress, regardless of the effects of the importation upon the local community. That is true whether what is brought in consists of diseased cattle[28] or fraudulent or unsound insurance.

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[25] See Union Brokerage Co. v. Jensen, 322 U. S. 202; Clark v. Paul Gray, 306 U. S. 583; Bradley v. Public Utilities Commission, 289 U. S. 92; Hendrick v. Maryland, 235 U. S. 610; Clark v. Poor, 274 U. S. 554; New Mexico *ex rel.* McLean v. Denver & Rio Grande R. Co., 203 U. S. 38.

[26] Cf. Hale v. Bimco Trading Co., 306 U. S. 375; Baldwin v. Seelig, 294 U. S. 511; Hoopeston Co. v. Cullen, 318 U. S. 313.

[27] Cf. authorities cited in note 25.

[28] See, as to state exclusions of and prohibitions on interstate commerce, Rasmussen v. Idaho, 181 U. S. 198; Smith v. St. Louis & S. W. R. Co., 181 U. S. 248; Compagnie Francaise v. State Board of Health, 186 U. S. 380; Reid v. Colorado, 187 U. S. 137; Oregon-Washington R. R. & Navig. Co. v. Washington, 270 U. S. 248; Mintz v. Baldwin, 289 U. S. 346; Crossman v. Lurman, 192 U. S. 189; Plumley v. Massachusetts, 155 U. S. 461; Hennington v. Georgia, 163 U. S. 299. See also Kimmish v. Ball, 129 U. S. 217; M. K. & T. R. Co. v. Haber, 169 U. S. 613; Carter v. Virginia, 321 U. S. 131.

Here California's reserve requirements for securing authority to do business cannot be held, either on the face of the statute or by any showing that has been made, to be excessive for the protection of the local interest affected; or designed or effective either to discriminate against foreign or interstate insurers or to forbid or exclude their activities, by all who are able and willing to maintain reasonable minimum reserve standards for the protection of policyholders. Exclusion there is, but it is exclusion of what the state has the power to keep out, until Congress speaks otherwise. Every consideration which supports the licensing of agents and brokers, and the authorities we have cited giving effect to those considerations,[29] sustain the state's requirements in this respect, as do also the decisions which have sustained various measures of exclusion in protection of the public health, safety and security not only from physical harm but from various forms of fraud and imposition.[30]

It is quite obvious, to repeat only one of those considerations, that if appellant's contentions were accepted and foreign insurers were to be held free to disregard California's reserve requirements and then to clothe their agents or others acting for them with their immunity, not only would the state be made helpless to protect her people against the grossest forms of unregulated or loosely regulated foreign insurance, but the result would be inevitably to break down also the system for control of purely local insurance business. In short, the result would be ultimately to force all of the states to accept the lowest standard for conducting the business permitted by one of them or, perhaps, by foreign countries. Inevitably this would mean that Congress would be forced to intervene and displace the states in regulating the business of insurance. Neither the commerce clause nor the *South-Eastern* decision dictates such a result.

We do not intimate that this particular society's insurance is unsound or fraudulent. As to that no showing has been made. We only say that California has imposed its reserve requirements as allowable standards for securing minimum assurance to the state's policyholders in respect to performance of their policies by the insurer, not as a mere exclusionary measure in exercise of the power to bar foreign corporations altogether; and that in the absence of compliance the state can exclude the company and its

[29] See Part I, text.
[30] See note 28.

representatives as it did, until Congress makes contrary command. Their remedy is not to destroy the regulatory reserve conditions, but to comply with them.

It follows also that appellant's objections founded on the provisions relating to the placing of surplus line insurance with nonadmitted insurers are without merit. Apart from the phase relating to the requirements for obtaining the surplus line broker's license, the objection is two-fold. One is that, even if licensed, appellant would be forbidden to place the insurance with a nonadmitted insurer, unless there were no admitted one with which the risk could be written. The other, that in any event the risk could not be placed with the nonadmitted insurer for a less premium than would be accepted by any admitted insurer. The short answer would seem to be that by the reserve requirements for admission and related prohibitions the state forbids entirely the placing of insurance of the sort issued here whether with domestic, admitted or nonadmitted companies.[31]

It remains to say a word concerning the effect of the McCarran Act for this case and the contentions founded on the Fourteenth Amendment.

As for the latter, with respect to due process, the only objection advanced which is independent of commerce clause considerations, is that to sustain the state's requirements, particularly in so far as they exclude the Society from interstate operations in California and thus also appellant's activities in aid of its business, will be in effect to project California's laws into other states, here presumably Arizona, and regulate the Society's activities there. The contention is obviously without merit. Nothing which California requires touches or affects anything the Society or appellant may do or wish to do in Arizona or elsewhere than in California. *Hoopeston Co.* v. *Cullen*, *supra*.

Likewise the equal protection contention is wholly without substance.[32]

Our determination has been made without specific reliance upon the McCarran Act for two reasons. One is that this was not necessary. The other arises from the facts that this is a criminal proceeding, the appellant's acts held to violate the California statutes were committed in August following rendition of the *South-Eastern* decision in June of 1944, and the McCarran Act

31 See note 20 and text.

32 See note 6 and text *infra*.

was not approved until March 9, 1945. The effect of that statute we have considered in the *Prudential* case, decided today. But that case involved no criminal or penal phase and therefore no conceivable *ex post facto* effect. It is doubtful that more than the semblance of such an effect would be involved by reliance upon the Act in this case. For it hardly could be maintained that the *South-Eastern* decision had the effect to convert Congress' preexisting silence concerning a matter which prior to the decision had been held not to be commerce into an expression by Congress of disapproval of these provisions of the California Code during the short period intervening between the decision and the date on which appellant acted. The indicated inference, if any, would be to the contrary, wholly without regard to the McCarran Act. Its effect might reasonably be taken as merely declaring or confirming expressly the inference which would be indicated from Congress' silence entirely without reference to the Act's provisions. But the declaration was made, as we have said, after appellant's acts were done. And to avoid any semblance of retroactive effect in a criminal matter, we have refrained from explicit reliance upon the Act in this case. It does not detract from our decision on other grounds that the McCarran Act, if applied, would dictate the same result.

The judgment is

Affirmed.

Mr. Justice JACKSON took no part in the consideration or decision of this case.

Mr. Justice DOUGLAS dissenting in part.

I agree with the Court that the general license requirements which California provides for the insurance agents were constitutional under the decisions of the Court, even prior to the McCarran Act. But prior to that Act California could not under our decisions under the commerce clause exclude an interstate business, at least in absence of a showing that it was a fraudulent enterprise or in an unsound condition. No such showing is made here. The McCarran Act changes that rule; but it should not be allowed to make unlawful what was lawful when done.